

**ALCOHOL AND DRUG RULES: AN OVERVIEW**  
**U. S. DEPARTMENT OF TRANSPORTATION**  
**MARCH 1994**

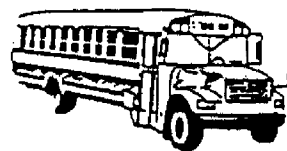
**NOTATION:**

*The U. S. Department of Transportation definition of a "commercial vehicle" includes passenger vehicles designed to carry 16 or more, including the driver. All drivers of those vehicles are required to be included in the random testing program.*

*The State of California definition of a "commercial vehicle" includes those designed to carry 10 or more passengers. Any CSU employee who drives only a 10-passenger vehicle is required to have a Passenger Endorsement to a Class C license, but is not required to be included in the random testing program.*



U.S.  
DEPARTMENT  
OF  
TRANSPORTATION  
**FEDERAL  
HIGHWAY  
ADMINISTRATION**



# ALCOHOL & DRUG RULES

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*AN OVERVIEW*

**MARCH 1994**

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## **A**DMINISTRATOR'S MESSAGE

The Federal Highway Administration is committed to Secretary Federico Peña's goal of promoting safe transportation, including an effort to significantly reduce death and injuries on our Nation's highways.

These new regulations will help us make our highways as safe as possible by assisting employers in identifying commercial motor vehicle drivers who have problems with alcohol and drugs. By enhancing employers' ability on this front, we promote safety by reducing accidents caused by alcohol and drug abusers.

This publication describes the important points of these regulations.

I am confident that employers and drivers alike will be pleased with the comprehensive and confidential methods of testing which the Department of Transportation and FHWA have developed.



Rodney E. Slater  
Federal Highway Administrator

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## **A**LCOHOL AND DRUG RULES: AN OVERVIEW

This pamphlet provides a general overview of the Federal Highway Administration (FHWA) drug and alcohol testing rules for persons required to have a commercial driver's license (CDL). The rules published by the FHWA and the U.S. Department of Transportation (DOT) Office of the Secretary on February 15, 1994 provide the requirements applicable to employers and employee/volunteer drivers covered by the rules. Because the information that follows is a general summary of the rules, it should not be relied upon for the legal requirements of the rules. It does not contain many of the requirements or special circumstances detailed in the FHWA and DOT rules. A list of the alcohol and drug testing rules published by the FHWA, DOT Office of the Secretary and the National Highway Traffic Safety Administration (NHTSA) applicable to CDL drivers and their employers is at the end of this document. Copies of the rules and other information may be obtained from the FHWA offices listed at the back of this pamphlet.

## **W**HAT IS THE OMNIBUS ACT?

The Omnibus Transportation Employee Testing Act of 1991 requires alcohol and drug testing of safety-sensitive employees in the aviation, motor carrier, railroad, and mass transit industries. The DOT published rules mandating anti-drug and alcohol misuse prevention programs in February 1994. The rules also expand and supplement existing drug testing rules published in November 1988 that mandated drug testing of aviation, interstate motor carrier, railroad, pipeline, and commercial marine employees. The February 1994 rules generally require implementation beginning on January 1, 1995 for large employers (generally, 50 or more safety-sensitive drivers) and January 1, 1996 for all other employers.

The current rules for drug testing of interstate commercial motor vehicle drivers remain in effect until the new rules are required to be implemented.

## WHAT ARE THE RULES?

The FHWA has issued a rule requiring alcohol and drug testing of drivers who are required to have a commercial driver's license. The DOT rules include procedures for urine drug testing and breath alcohol testing. The urine drug testing procedures rule was issued in December 1989 and governs drug testing programs mandated by the FHWA. The 1994 amendments to Part 40 add breath alcohol testing procedures and additional urine specimen collection procedures that provide for split urine specimens.

## WHO IS AFFECTED BY THESE RULES?

The FHWA rules cover safety-sensitive employees in transportation who drive commercial motor vehicles requiring a CDL to operate. There are about 6,600,000 holders of CDLs.

Examples of drivers and employers that are subject to these rules are:

- Federal, State, and local governments
- Apian industry (Beekeepers)
- For-Hire Motor Carriers
- Private Motor Carriers
- Civic Organizations
- Churches
- Indian Tribes
- Farmers and Custom Harvesters

## WHAT ALCOHOL USE IS PROHIBITED?

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

- While having a breath alcohol

concentration of 0.04 percent or greater as indicated by an alcohol breath test.

- While using alcohol.
- Within four hours after using alcohol.

In addition, refusing to submit to an alcohol test and 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:

- **Preemployment** - conducted before applicants are hired or after an offer to hire, but before actually performing safety-sensitive functions for the first time. Also required when employees transfer to a safety-sensitive (Driver) position.
- **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 and 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 WILL 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 (usually from a "pool" of drivers subject to testing). The testing dates and times are unannounced and are with unpredictable frequency throughout the year. Each year, the number of random tests conducted by the employer must equal at least 25% of all the safety-sensitive drivers. These rules provide for adjustments to the annual random testing rate based on the violations (alcohol tests 0.04 or greater and refusals to test) in the industry subject to the FHWA regulations. The random rate is set for each industry regulated by the DOT: thus, aviation employees could be tested at a rate different from commercial motor vehicle drivers.

## **H**OW WILL ALCOHOL TESTING BE DONE?

The rules require breath testing using evidential breath testing (EBT) devices approved by the NHTSA. The NHTSA periodically publishes a list of approved devices in the *Federal Register*. Two breath 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 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 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.

## **W**HO DOES THE TESTING?

Employers are responsible for implementing and conducting the testing programs. They may do this using their own employees, 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 who conducts the testing must be trained to operate the EBT and be proficient in the breath testing procedures.

## **W**HAT 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. A violation of these employer-based testing rules is not placed on, nor affects, the driver's CDL record.

## **H**OW WILL EMPLOYEES KNOW ABOUT THESE NEW RULES?

Employers must provide detailed information about alcohol misuse, the employer's 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.

## **A**RE 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 employers' 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.

## **H**OW WILL THE FHWA KNOW IF THESE RULES ARE BEING FOLLOWED?

Employers are required to keep detailed records of their alcohol misuse prevention programs. The

FHWA will conduct inspections or audits of employers' programs. Additionally, selected employers will have to submit annual calendar year summary reports to the FHWA. These reports will be used to help monitor compliance with 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.

## **A**RE DRIVER ALCOHOL TESTING RECORDS CONFIDENTIAL?

Yes! Driver alcohol testing records are confidential. Test results and other confidential information may only be released to the employer and the substance abuse professional. Any other release of this information is only with the driver's 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 decisionmaker.

## **W**ILL FOREIGN OPERATORS HAVE TO COMPLY WITH THESE RULES?

The FHWA has issued a proposed rule that would subject foreign motor carriers to the alcohol misuse rules when their drivers are operating in the United States beginning in 1996. The proposal, however, indicates that FHWA will pursue international agreements in this area because they would more effectively satisfy the basic objectives and purposes of this rule. If such agreements are in place prior to 1996, this rule would not apply to foreign operators.

## **W**ILL THE DOT AUTHORIZE ANY ALCOHOL TESTING METHODS BESIDES BREATH TESTING?

The alcohol testing rules authorize and require only breath alcohol testing methods. However, the DOT has issued two other notices that propose to expand alcohol testing options. A proposal to use blood alcohol testing for reasonable suspicion and post-accident tests where breath testing is not readily available was published in February 1994. The



proposal would enable employers to obtain a blood alcohol test when an EBT and/or trained breath alcohol technician is not available for tests that may be necessary in remote locations or at unpredictable hours. The proposal contains qualifications for personnel authorized to draw a blood sample, procedures for testing blood samples, qualifications for laboratories performing the blood alcohol analysis, and protections and safeguards for drivers. The DOT has also proposed model specifications for alcohol screening test devices. These proposed specifications detail precision and accuracy requirements for disposable or portable devices that could be used for screening tests to determine an alcohol concentration of 0.02 or greater. Potentially, these specifications could be applied to saliva, breath or other body fluids. If a "positive" result (0.02 or greater) is obtained on the screening test devices, a confirmation test would be required using an EBT. The DOT hopes to issue final specifications, begin approving any qualified alcohol screening devices, and provide procedures for their use before the implementation dates of the alcohol testing rules.

## WHAT ABOUT DRUG TESTING?

The drug testing rules issued by FHWA in November 1988, with later amendments, remain in effect. The FHWA's new controlled substances and alcohol testing rule will take effect beginning in January 1995 for all drivers of vehicles requiring a commercial driver's license employed or used by large employers. However, drug testing split samples are required to be collected starting on August 15, 1994. 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?

The DOT drug and alcohol testing procedures rule (49 CFR Part 40) sets forth the procedures for drug testing in the FHWA industries. 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). There are over 90 DHHS-certified drug testing laboratories located throughout the United States. 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 Act 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. For all the drugs except PCP, there are some limited, legitimate medical uses that may explain the positive test result. 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 FHWA 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. Other regulations require drivers involved in interstate commerce to report any medical use of controlled substances.

## **WHAT ARE THE CONSEQUENCES OF A POSITIVE DRUG TEST?**

As with an alcohol misuse violation, 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 or MRO, 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 may be 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 to a collection site to accomplish the urine specimen collection. The FHWA has issued a proposal to permit adjustment to the random drug

testing rate. The proposal is similar to what is required for random alcohol testing. The random drug testing rate would be determined annually based upon the random positive rate for the FHWA industry.

## **A**RE 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.

## **A**RE 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 decisionmaker 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.

## **W**HERE CAN I GET MORE INFORMATION?

### **ACCESS TO THE FHWA ELECTRONIC BULLETIN BOARD SERVICE (FEBBS)**

Copies of the rules published by the Office of the Secretary of Transportation and the FHWA may be obtained from the FHWA's Electronic Bulletin Board Service (FEBBS) using an IBM-compatible microcomputer and modem. The FEBBS is a read-only facility. The FEBBS is an informal means to exchange information among FHWA employees and with the public. The information on FEBBS is divided into Conferences and is reached by selecting <C>onferences from the FEBBS main menu, and then selecting the letter of the Conference you want to see. There are also general information Conferences on areas such as Local Area Networks and Electronic Data Sharing.

The telephone number for FEBBS is Area Code **202-366-3764**. This telephone number supports 300, 1200, and 2400 baud line speeds. For users with 9600 baud line speed capability, use **202-366-3175**. A variety of terminal types and protocols are supported by the system. However, setting the modem for 2400 baud (or 9600 baud), 8 data bits, full duplex, and no parity will give optimal performance. The service is operational from 4:00 AM to 3:00 AM Eastern time, seven days a week.

If you need more information on how to access FEBBS, contact one of the offices listed below or FHWA Computer Help Desk, HMS-40, room 4401, 400 Seventh Street, S.W., Washington, DC 20590. 202-366-1120.

# **F**HW A REGIONAL OFFICES

Specific information can be obtained from the FHWA-OMC offices listed below:

## **REGION 1**

Leo W. O'Brien Federal Building  
Clinton & North Pearl Streets  
Room 737  
Albany, New York 12207

## **REGION 3**

Federal Building  
10 South Howard Street, Suite 4000  
Baltimore, Maryland 21201

## **REGION 4**

1720 Peachtree Road, NW  
Suite 227  
Atlanta, Georgia 30367

## **REGION 5**

18209 Dixie Highway  
Homewood, Illinois 60430-2294

## **REGION 6**

P.O. Box 902003  
Fort Worth, Texas 76102

## **REGION 7**

P.O. Box 419715  
Kansas City, Missouri 64141-6715

## **REGION 8**

555 Zang Street, Room 190  
Lakewood, Colorado 80228

## **REGION 9**

211 Main Street, Room 1108  
San Francisco, California 94105

## **REGION 10**

KOIN Center, Suite 600  
222 SW Columbia Street  
Portland, Oregon 97201

## **WASHINGTON, D.C.**

### **HEADQUARTERS**

Office of Motor Carrier Standards  
Room 3107  
400 Seventh Street, S.W.  
Washington, D.C. 20590

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**

Drug Enforcement and  
Program Compliance, Room 9404  
400 Seventh Street, S.W.  
Washington, D.C. 20590  
202-366-3784

Copies of the alcohol and drug rules can be obtained from public libraries that subscribe to the *Federal Register* and the FHWA Electronic Bulletin Board Service (FEBBS).

# **L**IST OF RULES PUBLISHED

The Alcohol and Drug Rules were published on February 15, 1994 in the *Federal Register*. Employers of commercial motor vehicle drivers should read the following parts of that publication.

## **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

Proposed Rule: Controlled Substances & Alcohol Use and Testing. Foreign-Based Motor Carriers and Drivers

## **PART IX**

Proposed Rule: Random Drug Testing Program

Specific questions addressing any of the material in this pamphlet may be directed to the FHWA Regional Offices listed or the FHWA Division Office in each State.