

**D.O.T. MANDATORY DRUG AND
ALCOHOL TESTING REQUIREMENTS
FOR COTTON GINS**

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Abstract

Effective January 1, 1996 the United States Department of Transportation, Federal Highway Administration (FHWA) requires drug and alcohol testing of all commercial motor vehicle drivers. These requirements stemmed from the Omnibus Transportation Employee Testing Act of 1991. This Act requires pre-employment, random, post-accident, and reasonable suspicion testing of all employees who possess a commercial drivers license. The Act sets forth requirements for prohibitions for the use of alcohol and drugs, specifies the types of tests required and the associated procedures, and sets forth recordkeeping and training requirements. Cotton gins that have employees that are required to have a commercial drivers license to drive commercial motor vehicles for their cotton gins are required to comply with this regulation.

Introduction

The Omnibus Transportation Employee Testing Act of 1991 applies to any employee who holds a commercial driver's license. On February, 15, 1994 the final rules addressing alcohol and drugs were issued. These rules apply to more than 7.4 million employees nationwide, and are intended to address prevention and testing for alcohol misuse and drug use. The new regulations cover prohibitions against the use of alcohol and drugs at the workplace. The rules set forth the types of tests to be required and the testing procedures to be used for that testing. Requirements for recordkeeping and training are also set forth in the regulation. The new rules became effective January 1, 1995 for employers with 50 or more employees with commercial drivers licenses, and January 1, 1996 for employers with less than 50 drivers. Cotton gins are **not** specifically exempt from this regulation.

Applicability

These new testing requirements apply to all employees who are subject to the requirement to possess a commercial driver's license and drive a commercial motor vehicle. A commercial motor vehicle is defined as follows:

- Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
- Has a gross vehicle weight rating of 26,001 or more pounds;
- Is designed to transport 16 or more passengers, including the driver; or
- Is any size transporting hazardous materials requiring placards.

However, please note that individual states may have certain exemptions to these specifications, and should be consulted. In some states, drivers of module haulers may be exempt if they do not drive another commercial motor vehicle, as some states exempt module haulers from the definition of a commercial motor vehicle. These rules apply to both interstate and intrastate drivers. The regulations also apply to individual owner operators.

Exemptions

The following employers and drivers are exempt from these testing requirements:

- Those required to comply with the alcohol and/or drug testing requirements of 49 CFR parts 653 and 654 (transit operations);
- Those granted a full waiver from the requirements of a commercial driver's license;
- Those granted an optional state waiver from the commercial drivers license requirements;
- Drivers of vehicles that do not meet the commercial motor vehicle definition; but are required by the state to possess a commercial drivers license;
- Foreign domiciled operations, with respect to any driver whose place of reporting to duty (home terminal) for commercial motor vehicle transportation services is located outside the territory of the United States; or
- Active-duty military personnel.

An employer should verify these exemptions with their local Gin Association to verify these exemptions as many of the exemptions will be made on a state by state basis. An example might be drivers of module trucks. Some states may exempt drivers of module trucks, if the state has granted a full waiver for that state, and the driver only

drives module trucks and no other commercial motor vehicles.

Prohibitions

The Act prohibits drivers from performing safety sensitive job functions while having an alcohol concentration of 0.04 or greater. Safety sensitive job functions includes any work on, in or around a commercial motor vehicle, such as driving, repairing or loading a commercial motor vehicle.

It also prohibits drivers from being on duty or operating a commercial motor vehicle while possessing alcohol, or using alcohol while performing safety sensitive job functions. A driver may not perform safety sensitive job function within four hours after using alcohol. Drivers are prohibited from performing any safety sensitive job function when using a controlled substance, unless authorized by a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle. The Act prohibits drivers from reporting to duty, remaining on duty or performing a safety-sensitive job function, if the driver tests positive for controlled substances. There are five groups of controlled substances that must be tested for and include: marijuana, cocaine, opiates (morphine and codeine), amphetamines, and phenylcyclidine (PCP).

If test results indicate a blood alcohol content (BAC) of greater than 0.02, but less than 0.04, a driver cannot perform any safety sensitive job functions for at least 24 hours. If the BAC is greater than 0.04 or test results are positive for controlled substances, the driver cannot perform safety sensitive job functions until return-to-duty testing indicates that the BAC is less than 0.02, or the test results for controlled substances are negative; and the driver has been medically recertified by medical examiner. Refusal to take a test is considered the same as failing a test.

It should be noted that there are disqualifications for certain violations. If an employee is found to have been driving while under the influence of drugs or alcohol, or has left the scene of an accident, or committed a felony, the first offense will result in the employee not being allowed to drive for a period of one year. If the employee is transporting hazardous materials, this disqualification is extended to three years. Any subsequent violations result in disqualification for life.

Tests Required

There are six types of tests required under the Act. These include pre-employment, post-accident, reasonable suspicion, random, return-to-duty, and follow-up tests. The procedures use an evidential breath testing (EBT) device for alcohol testing. For drug testing, urine specimen collection and testing by a laboratory certified by the

Department of Health and Human Services is required. Each of these tests is discussed in detail in the following:

Pre-employment testing. Pre-employment alcohol testing is not required. However, pre-employment controlled substance testing is required. The only exceptions to this are as follows: (1) The driver has participated in a drug testing program within the previous 30 days; and (2) while participating in that program, either was tested for controlled substances within the past six months or participated in a random controlled substances testing program for the previous 12 months.

Post-accident testing. As soon as practicable following an accident involving a commercial motor vehicle, the surviving driver must be tested for alcohol and controlled substances if the accident involved the loss of human life, or the driver receives a citation under state or local law for a moving traffic violation. An accident is defined as an occurrence involving a commercial motor vehicle operating on a public paved road which results in:

- a fatality; or,
- bodily injury; or,
- disabling damage to one or more motor vehicles resulting from the accident.

Alcohol testing must occur within eight hours, and controlled substances testing must occur within 32 hours. If testing does not occur within these time frames, any attempt to test must cease and it must be documented as to why the testing did not occur.

Random Testing. The regulation sets forth requirements for random testing to be spread throughout the year. A minimum of 25% of the drivers shall be tested for alcohol each year, and a minimum of 50% of the drivers shall be tested for controlled substances. The random selection shall be conducted using a scientifically valid method and drivers shall proceed immediately to the testing centers upon selection. Employers may also choose to join a consortium of employers. This is required of an owner/operator who employs only himself or herself as a driver. In a consortium the same requirements of the specific percentages still apply. When an employee is chosen his name is put back into the pool for selection.

Reasonable Suspicion Testing. When the employer has reasonable suspicion to believe that a driver has violated the prohibitions of these regulations, that driver must submit to alcohol and controlled substances testing. Reasonable suspicion must be based on the observation of physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. These observations must be made by at least one trained supervisor or company official, and there must be written documentation of these observations leading to test. The supervisor or company official who makes this determination must have received at least 60 minutes of

training on alcohol misuse and 60 minutes of training on controlled substances abuse.

Return-to-duty Testing. Drivers who have engaged in prohibited conduct shall submit to return-to-duty testing prior to performance of any safety sensitive duties. Results of alcohol tests shall indicate a breath alcohol of less than 0.02, and results of controlled substances shall indicate a verified negative.

Follow-up Testing. Should a substance abuse professional (SAP) determine that a driver needs assistance resolving problems associated with alcohol or drug use, the employer shall ensure that the driver is subject to unannounced follow-up testing. This testing must consist of at least six tests in the first 12 months, but overall the testing cannot exceed 60 months. The substance abuse professional may terminate testing after the first six tests have been completed.

Testing Procedures

All testing for alcohol and drugs shall be conducted in accordance with the procedures set forth in 49 CFR Part 40. Alcohol testing must be performed by a Breath Alcohol Technician (BAT) using an Evidential Breath testing device (EBT). All drug urinalysis must be performed by a laboratory certified by the Department of Health and Human Services.

Training

Supervisors must be given at least 60 minutes of training on misuse of alcohol and 60 minutes of training on drug misuse and abuse. The training must include indicators of alcohol and drug misuse, and must be documented. Employees must be trained on the requirements of the Act, and informed on the policies and procedures the company is using to implement this alcohol and drug testing program.

Recordkeeping

Each employer is required to maintain records of its alcohol misuse and controlled substances use prevention program. Records shall include all test results, refusals to take required tests, annual year summaries, collection logbooks, documents relating to the random selection process, etc. Each employer shall prepare and maintain an annual calendar year summary of the results of its alcohol and controlled substances testing programs. This information is to be submitted to FHWA only upon request.

Consortia

There may be some unique opportunities for gins to join what is known as a consortium. A consortium is a group of businesses or individuals who are covered under these

regulations and join together for purposes of testing. A consortium serves as an administrator to perform the random selections and perform recordkeeping and chain of custody recordkeeping for companies. For individual owner/operators this is the only means to comply with the regulations. However, a consortium participant should keep in mind that if a consortium makes a mistake, the employer is responsible. DOT-FHWA advises employers to thoroughly investigate the potential consortium and check references and experience of the consortium, and check with the state field FHWA office for their experience with specific area consortia. DOT-FHWA further advises that employers hire a lawyer to protect the employer's rights and develop a company policy.

Summary

Each employer with employees required to have commercial drivers licenses must have a drug and alcohol testing program in place and operating on January 1, 1996. This program shall consist of drug and alcohol testing and a program to prevent misuse and abuse of these substances during the performance of safety sensitive job functions. This is a federal program under the United States Department of Transportation, Federal Highway Administration (FHWA); however, each individual state has its own administering agency. They should be contacted for any differences in what information is presented here. Contact your state's Ginning Association for specific information regarding your state's implementation of this program.