New Entrants Safety Education Seminar for Georgia Motor Carriers

CHAPTER 11
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CONTROLLED SUBSTANCES AND ALCOHOL USE TESTING REGULATIONS
OVERVIEW

This chapter informs employers on FMCSA controlled substance and alcohol use testing regulations in order to help prevent accidents and injuries resulting from the misuse of alcohol or the use of controlled substances by commercial motor vehicle (CMV) drivers.
This presentation outlines important U.S. regulations.

- Employer **MUST** ensure that all regulations are followed by drivers

- Employer is responsible for any violation committed by a driver
Employers and drivers who operate CMVs in the U.S. and are subject to:

- Commercial Driver’s License requirements
- Licencia Federal de Conductor requirements
- Commercial Driver’s License requirements of the Canadian National Safety Code
APPLICABILITY

- Employer who employs self as driver:
  - MUST comply with requirements as both employee and employer
  - MUST be in a consortium of two or more employees in the random testing selection pool
The Controlled Substance and Alcohol testing rules have priority over all U.S. state and local law except when criminal action is being taken for acts of reckless conduct.
PROHIBITIONS

Alcohol Concentration above the legal limit set by the FMCSA

- On-duty use
- Pre-duty use
- Use following an accident
CONTROLLED SUBSTANCE TESTING

If a driver tests positive for a controlled substance:

- Driver shall NOT report to duty, remain on duty or perform safety sensitive functions
- Employer shall NOT permit the driver to perform safety sensitive functions
- Driver may be required to inform the employer of any therapeutic drug use
EMPLOYER RESPONSIBILITIES

- Compliance with Part 40
- Officials, Representatives and Agents
- Agreements and arrangements, written and verbal
EMPLOYER RESPONSIBILITIES

Immediately remove employee from safety sensitive functions (until return to duty process is completed) after receipt of:

- Positive drug test results
- Verified tainted or substituted drug test results
- Alcohol test greater than .04
EMPLOYER RESPONSIBILITIES

Temporarily remove employee from safety sensitive functions after receipt of:

- Alcohol test between 0.02 and 0.39
- A diluted specimen
- Invalid drug test requiring a 2\textsuperscript{nd} collection under direct observation
EMPLOYER RESPONSIBILITIES

- MUST direct an immediate re-test after receipt of a cancel test when a negative test result was required
- MUST not alter a drug or alcohol result
Evaluates employees who have violated a DOT drug and alcohol regulation

Makes recommendations about education, treatment, follow-up testing and after care
No driver with an alcohol concentration between **0.02** and **0.39** shall drive for at least 24 hours after being tested.
REQUIRED TESTS

- Pre-employment (Controlled Substances Test only)
- Post Accident
- Random
- Reasonable Suspicion
- Return to Duty
- Follow-Up
Driver shall not perform a safety sensitive function (including driving) until a negative controlled substance test result is received.
POST-ACCIDENT TESTING

After an accident each employer shall test each surviving driver for alcohol and controlled substances when the following apply:

<table>
<thead>
<tr>
<th>Type of accident involved</th>
<th>Citation issued to the CMV driver</th>
<th>Test must be performed by employer</th>
</tr>
</thead>
<tbody>
<tr>
<td>i. Human fatality</td>
<td>YES</td>
<td>YES</td>
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<td></td>
<td>NO</td>
<td>YES</td>
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<td>ii. Bodily injury with immediate medical treatment away from the scene</td>
<td>YES</td>
<td>YES</td>
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<td></td>
<td>NO</td>
<td>NO</td>
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<tr>
<td>iii. Disabling damage to any motor vehicle requiring tow away</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>NO</td>
<td>NO</td>
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</tbody>
</table>
POST-ACCIDENT TESTING

If after an accident, a driver needs to be tested, the alcohol test shall be done within 8 hours of the accident and the controlled substance test, shall be performed within 32 hours.
An Accident means:

1) An occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in:
   1)(i) A fatality;
   1)(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
   1)(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.
Every driver shall submit to random alcohol and controlled substance testing

Every employer shall comply with random testing requirements
Companies must randomly test drivers at a minimum annual percentage rate of:

- 10% of the number of drivers for alcohol testing
- 50% for controlled substances testing
RANDOM TESTING

The random alcohol test must be given immediately before, during or after a driver performs a safety sensitive function (including driving)

All drivers must have an equal chance of selection by a scientifically valid method, such as:

✓ Random number table
✓ Computer based random number
A driver **MUST** submit to an alcohol and/or controlled substance test if there is reasonable suspicion that the prohibitions concerning alcohol and/or controlled substances have been violated.
Suspicions MUST be based on specific observations of the supervisor or company official concerning the driver’s:

- Behavior
- Speech
- Body odor (such as marijuana or alcohol)
RETURN-TO-DUTY TESTING

An employer shall ensure that before a driver returns to duty:

- Driver’s return-to-duty alcohol test indicates an alcohol concentration of **less than 0.02**
- Driver’s return-to-duty controlled substances test indicates a negative result
Substance Abuse Professional will set up a follow-up testing plan.

- Employer MUST ensure that the plan is carried out.
- A minimum of 6 tests MUST be conducted in the first 12 months.
- Driver may be subject to testing for a maximum of 60 months.
REFUSAL TO SUBMIT

- No driver shall refuse to submit to a required test
- No employer shall permit a refusing driver to perform safety sensitive functions
URINE COLLECTION PERSONNEL

- Must meet training requirements

- Must not work for a U.S. Department of Health and Human Services certified laboratory

- Must not be immediate supervisor of employee being tested unless:
  - No other collector is available
  - Permitted to do so by DOT agency drug/alcohol regulations
URINE COLLECTOR TRAINING REQUIREMENTS

- Receive qualifications training

- Complete 5 error-free mock collections

- Meet schedule for qualifications training and proficiency demonstration

- Be knowledgeable about:
  - Part 40 (including any changes)
  - DOT urine specimen collection procedures
URINE COLLECTIONS SITE

- MUST meet security requirements
- No one except employee may be present in room during collection (except in directly observed test)
- MUST have:
  - All necessary personnel
  - Materials and equipment
  - Temporary storage and shipping of specimen to laboratory
  - Clean surface for writing
URINE COLLECTION FORMS

- MUST use current Federal Drug Testing Custody and Control Form (CCF) to document every urine collection
- MUST use a five-part carbonless manifold CCF
- May NOT use Federal Form for non-DOT collection
CONDUCTING COLLECTION IN SPANISH

- May use an equivalent Spanish version of the Custody and Control Form **ONLY** when both the employee and collector can understand and use the form in Spanish.
APPROVED LABORATORIES

- ONLY laboratories certified by the U.S. Department of Health and Human Services under the National Laboratory Certification Program (NLCP)

- To view approved drug testing labs: http://www.health.org/workplace
CONTROLLED SUBSTANCES

Laboratories **MUST** test for:
- Marijuana
- Cocaine
- Opiates
- Amphetamines
- Phencyclidine (PCP)
LAB SUMMARIES

✗ Laboratory semi-annual statistical summaries MUST be sent to employer by:

+ Jan. 20\textsuperscript{th} for July 1\textsuperscript{st} – Dec. 31\textsuperscript{st} of previous year
+ July 20\textsuperscript{th} for Jan. 1\textsuperscript{st} – June 30\textsuperscript{th} of current year

✗ Laboratory MUST release summary information:

+ When requested by employer in response to an inspection, audit or review by a DOT agency
+ To appropriate parties
RECORD RETENTION

- Employer shall maintain records of alcohol misuse and controlled substance use prevention programs

- Records shall be maintained in a secure location with controlled access
RECORD RETENTION

- Records kept for 5 years
- Alcohol test results showing a 0.02 BAC or greater
- Positive drug test results
- Refusals to submit to required tests
- Driver evaluations and referrals
- Required calibration of breath testing devices
- Copy of each calendar year summary
RECORD RETENTION

- **Records kept for two years**
  - Records related to the collection process
  - Negative or cancelled drug test results
  - Alcohol test results showing a 0.02 BAC or less

- **Records kept indefinitely**
  - Education and training records
ACCESS TO RECORDS

Information MUST be released if:

- Specific written consent is received from employee
- Requested by a DOT agency
- Requested by the National Transportation Safety Board
- Requested by Federal, state or local safety agency
PREVIOUS EMPLOYER INQUIRIES

- Can only be requested with written consent of employee

- Employer must request information regarding a new employee from all DOT-regulated employers from the previous 2 years

- Employer must remove driver if information is not obtained in 30 days (unless good faith effort is documented)
PREVIOUS EMPLOYER INQUIRIES

- Information released to an employer MUST be maintained in writing

- Previous employer MUST immediately release information after reviewing written consent

- Information received MUST be retained for 3 years
PREVIOUS EMPLOYER INQUIRIES

- Employer MUST ask an applicant about pre-employment tests or refusals during the previous two years in which the applicant did not obtain a job.

- If the applicant had any positive tests or refusals, the applicant MUST have documented completion of the return-to-duty process.
EMPLOYER OBLIGATIONS

Employers shall provide materials explaining the regulation requirements and the employer’s policies regarding alcohol misuse and controlled substances abuse.
EMPLOYER OBLIGATIONS

- Materials shall be given to each driver before the start of alcohol and controlled substance testing.

- Employer shall provide written notice of the availability of this information to representatives of employee organizations.
EMPLOYER/DRIVER DISCUSSIONS

Detailed discussions with drivers should include:

+ Identity of person to answer drug/alcohol related questions

+ Which drivers are subject to the requirements, what is prohibited and what a safety sensitive function is

+ When and how a driver would be tested
Detailed discussions with drivers should include:

- Drivers’ requirements to submit to testing and what constitutes a refusal
- Consequences for drivers that violate testing requirements
- Effects of alcohol misuse and drug use on health, work and personal life
SUPERVISOR TRAINING

Employer shall ensure that all supervisors receive:

+ At least 60 minutes of alcohol misuse training

+ At least 60 minutes of controlled substance use training
Training will be used to help determine whether reasonable suspicion exists to require a driver to be tested.

Training shall include probable indicators of alcohol misuse and controlled substances use:
- Behavioral
- Speech
- Performance

Recurrent training not required for supervisors.
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CONCLUSION
IN CONCLUSION

✓ Training and proper procedures are essential and in all areas of compliance. Drivers can lose their licenses and/or companies their right to operate if drivers or other staff do not follow these proper procedures.

✓ Equally Important, the rules and regulations are there to improve safety, and safety is key to trucking success.
Information in this training seminar is developed from governing laws, rules and regulations of the various federal and state entities and agencies referenced, their publications and websites and is accurate as of the date of publication. In some instances, non-copyrighted government materials have been used.

All websites referenced are accurate as of the date of creation of this training seminar.

This seminar provides basic training only, for more detailed information, consult officials of the FMCSA, the Georgia MCCD or certified industry safety professionals.