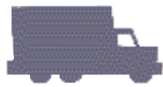


# PASS OR FAIL

## MANAGING A DRUG AND ALCOHOL

by Paul Farrell

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**T**he potential use of drugs or alcohol on the job is an especially large concern for fleet managers responsible for commercial drivers. The problems that can be caused by impaired drivers range from business interruptions resulting from faulty deliveries to lawsuits filed in the wake of accidents. These exposures are shared by businesses of all sizes in almost every industry. In fact, virtually every business that uses vehicles in the course of its operations has an interest in reducing the frequency and severity of these hazards.

One hazard-reduction tool mandated by the U.S. federal government is random drug and alcohol screening of commercial drivers. As part of an effort to reduce the number of drivers operating under the influence, the testing mandate also imposes a number of regulatory requirements and potential compliance liabilities.

The normal problems associated with moving goods are compounded by the fact that one or two of every 10 Americans use drugs on the job, according to the National Institute on Drug Abuse. For companies involved in the transportation industry, the consequences can be horrendous. Few roadway hazards can inflict as much damage as a 40-ton truck careening out of control. At a velocity of 55 miles per hour, a truck travels 60 feet in three-fourths of a second—about the time it takes an alert driver to perceive a hazard. Under the best of circumstances, a fully loaded truck in daylight on a dry road cannot stop in less than 300 feet. Nighttime driving, rain (which doubles the stopping distance), gravel on road-

ways and brakes that are out-of-adjustment all represent conditions that can contribute to accidents. These dangers are exacerbated by impaired drivers, who take longer to react to potential hazards and are often unable to respond properly.

Recent California Highway Patrol statistics cite drugs as the leading cause of about 10 percent of fatal crashes by trucks, compared to about 25 percent of vehicles overall. And a Stanford University study confirms that even occasional marijuana use can impair eye-hand coordination up to 24 hours after ingestion.

The U.S. federal government began calling for mandatory drug and alcohol testing when two drug-impaired Conrail employees were identified as the cause of a 1987 train collision in Maryland that killed 16 people and injured 175. Testing was first instituted within the trucking, aviation, transit, rail and gas pipeline industries at an annual cost estimated by the U.S. Department of Transportation of approximately \$200 million.

The legislative call for testing resulted in the Omnibus Transportation Employee Testing Act of 1991, which requires at least four types of alcohol and controlled-substance tests for all drivers who hold a commercial license. The act, which preempts a number of inconsistent state and local statutes, is intended to establish procedural requirements that assure the privacy and accuracy of test results, rehabilitate drivers found in violation and describe sanctions for compliance failures.

Since January 1, 1996, all employers with commercially licensed drivers on the payroll—

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# TESTING PROGRAM

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temporary, part-time and full-time—will be required to, over the course of the year, randomly select and test half of their drivers for drug use. Alcohol tests are required for 25 percent of a company's drivers. In addition to cargo transportation operations, drug and alcohol tests of commercial drivers must also be performed by churches and civic groups, school districts and federal, state and local governments.

Mandatory drug and alcohol testing is about to be expanded to Canadian employers sending drivers into the United States. Canadian companies with 50 or more drivers will be subject to the testing requirements as of July 1, 1996. The testing mandate will kick in for smaller employers a year later.

## **Required Actions**

The regulations require alcohol and drug tests to be conducted under a variety of situations. Companies have to conduct preemployment drug tests, unless a driver has been tested during the past six months or has participated in a random-test program during the past year. After accidents, drivers must be tested for alcohol use within eight hours and for controlled substances use within 32 hours. Tests must also be performed when there is a reasonable suspicion of drug or alcohol use and before allowing suspended drivers to return to the road.

A driver with a blood alcohol concentration that exceeds 0.02 percent must be removed from safety-sensitive functions for a minimum of 24 hours. Any driver that fails (or refuses to take) a test must be referred to a substance

abuse professional, who will determine what assistance or rehabilitation the driver needs. The professional will also monitor the driver's rehabilitation program and establish requirements for follow-up testing.

Because testing is required when there is reasonable suspicion of use, supervisors who will make such a determination must undergo training that covers physical, behavioral, speech and performance indicators of drug and alcohol use. All training must be documented.

The regulations also require supervisors and drivers to attend educational sessions about drug and alcohol use and testing. Employers have to provide drivers and representatives of employee organizations with materials explaining the regulations. For instance, drivers must receive the name of the person designated to answer questions; information about safety-sensitive functions and the categories of drivers subject to testing; and specific behavior that is prohibited.

Companies must also explain the testing procedures and the consequences of failing a test or refusing to be tested. In addition, drivers must also be provided with information about the effects of alcohol and controlled substances on their health and work, symptoms of alcohol and drug abuse and available intervention methods. When providing this information, employers must obtain written verification from drivers that they have received and understood the materials.

In addition to the testing and education requirements, companies are also required to contact the previous employer of all new drivers

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to obtain information on any tests recording a blood alcohol concentration of 0.04 percent or higher, information on any previous positive tests for controlled substance use and any refusal by a driver to submit to testing. (Similarly, employers are also required to supply information about their former drivers to other companies.) Employers must obtain the information within 14 days of the time the driver first performs safety-sensitive duties outlined within the regulations; if the information is not received, the driver may not continue to perform those duties.

Whenever a driver requires assistance in resolving problems associated with using alcohol or controlled substances, at least six unannounced follow-up tests must be completed within six months. Depending on the substance abuse professional's evaluation of the driver's condition, these tests may continue for up to five years. Before returning to the road, drivers who tested positive (or refused to be tested) must be approved by a substance abuse professional and/or pass another drug or alcohol test.

## Potential Liabilities

In addition to their common-law duty of care to employees, customers and the public at large, employers face a number of liability exposures from the testing regulations. Companies failing to comply with the Omnibus Transportation Employee Testing Act may face denial of insurance claims and/or litigation alleging negligent hiring (including failure to uncover an unfit job applicant), failing to take cor-

rective action and negligently entrusting an unfit employee with the means to harm someone else. Other potential compliance problems include citations for failing to implement a program in time; to notify employees before testing; to provide supervisors with effective training; and to make a good-faith effort to obtain records of previous drug or alcohol violations. In addition, failing to hire a driver because he or she is required to work with a substance abuse professional may violate provisions of the Americans With Disabilities Act.

## Enlisting Support

Because the regulations impose complex and paperwork-intensive requirements that are outside the traditional expertise of transportation companies, a number of support services have arisen to help these employers. Large vehicle leasing companies will often manage the required paperwork, provide training and confirm that compliance processes are in place. Compliance software is available, and a number of compliance management companies are able to coordinate an employer's testing needs. To meet the regulatory requirement that the tests be performed by a DOT-certified blood alcohol technician, most employers are sending their drivers to outside laboratories.

Because the random testing requirement is difficult for smaller operators to administer, the law allows companies to pool drivers for testing. Additionally, small-fleet managers and individual owner-operators are permitted to join purchasing consortiums for a range of testing services, including

sample gathering and processing, record keeping and, most importantly, combining drivers from different fleets into random selection testing groups. As a service to their memberships, a number of state trucking associations have established approved testing programs and can also recommend other resources.

Considerable information can also be obtained from the federal government. The latest rules were published in the February 15, 1994, edition of the *Federal Register*, which is available in many libraries. Companies can also contact an electronic bulletin board sponsored by the Federal Highway Administration (202-366-1120) to obtain the regulations. The agency has also produced a brochure, "Alcohol and Drug Rules," that provides an overview of the regulations. Information about testing procedures can be obtained from the Office of the Secretary of Transportation by calling 202-366-3784.

In addition, several organizations, including the American Trucking Association, the National Safety Council, most state trucking associations and a number of private training companies, provide video-training packages that satisfy program requirements.

Since the testing regulations were enacted, the requirements have drawn fire from critics who believe the tests dilute time and resources that could be used for driver training and monitoring. Others feel the vast majority of commercially licensed drivers carry out their responsibilities well without the laws and cite the high cost of compliance as objections.

Whatever your point of view on the regulations, federally mandated drug and alcohol testing requirements are here to stay. We can help make America's roads safer for all by embracing the regulations and taking the necessary steps to minimize the administrative burdens.

*Fireman's Fund offers a seminar program that provides information about drug and alcohol testing and the regulations. To learn more, call Paul Farrell at 415-899-3820.*

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