



THE OMNIBUS TRANSPORTATION ACT

GENERAL INFORMATION

NYS Thruway Authority
Office of Human Resource Management
Bureau of Training & Employee Development
and
NYS Canal Corporation

AN OVERVIEW

New York State Thruway Authority/Canal Corporation will comply with USDOT rules implementing the Federal Omnibus Transportation Act of 1991. The Act mandates pre-employment, reasonable suspicion, post-accident, random, and follow-up/return to duty testing of employees in various positions requiring the possession of a Commercial Drivers License and defined as safety-sensitive.

The following is a general overview of the Omnibus Transportation Employee Testing Act covering drug and alcohol testing rules for persons required to have a commercial driver's license (CDL) and defined as safety-sensitive. This includes all functions performed "on-duty", *from the time a driver reports to work until the time (s)he is relieved from work and from all* responsibility to perform safety-sensitive work. Because Authority/Canal Corporation employees may be required to operate a commercial vehicle at any time, they are considered to be performing safety-sensitive functions at all times they are on duty.

WHO IS AFFECTED BY THESE RULES?

Every person who operates a motor vehicle that has a gross vehicle weight of 26,001 or more pounds, or 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, or is designed to transport 16 (including the driver) or more passengers, or of any size used to transport hazardous materials which is required to be placarded and who is subject to commercial drivers license (CDL) requirements. These employees are considered to be "safety sensitive".

WHEN DO THESE RULES TAKE EFFECT?

These regulations are effective January 1, 1995 for large employers. The Federal Highway Administration defines large employers as those with more than 50 safety-sensitive employees (those subject to CDL requirements). Small employers must implement these regulations by January 1, 1996.

WHAT IS PROHIBITED?

Employees MUST NOT:

- Report for or remain on duty while having a Blood Alcohol Concentration (BAC) of 0.02% or higher;
- Possess., use, or be under the influence of alcohol while on duty; (Alcohol use means the consumption of any beverage, mixture or preparation, including any medication containing alcohol.)
- Perform any safety-sensitive function within 4 hours after using alcohol;
- Use alcohol for 8 hours following an accident, or until after such employee has undergone an alcohol test; or
- Report for duty or remain on duty requiring the performance of a safety-sensitive function when such driver uses any controlled substance. Prohibited controlled substances are cocaine, marijuana, opiates, amphetamines and phencyclidine.

- Refuse to submit to a required test.

WHAT TESTS ARE REQUIRED?

The following tests are required:

- > Pre-employment - conducted before applicants are hired or after an offer to hire, but before actually performing safety-sensitive functions for the first time. This category includes current employees who are promoted, demoted, or transferred to a safety-sensitive job.

- > Post-accident - conducted after accidents in which:
 - A. There was a fatality or
 - B. A citation was issued to the Authority/Corporation driver and medical attention was provided to a person immediately away from the scene of the accident or
 - C. A citation was issued to the Authority/Corporation driver and one of the vehicles involved in the accident had to be towed from the scene.

- > **Reasonable suspicion** - conducted when a trained supervisor or Agency official observes behavior or appearance that is characteristic of alcohol use or the influence of controlled substances.

- > **Random** - conducted for alcohol and/or drugs on a random unannounced basis. Random testing may be performed at any time while the driver is at work.

Twenty-five percent of all CDL drivers will be tested for alcohol on a random basis each year.

Fifty percent of all CDL drivers will be tested for use of controlled substances each year.

Tests must be unannounced and spread throughout the calendar year. Random selection could result in a driver being selected for testing more than once in a calendar year and as frequently as two days in a row.

- > **Return-to-duty and follow-up** - conducted when an individual who has violated the prohibited alcohol/drug 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.

WHAT ARE THE TESTING PROCEDURES?

Testing for drugs will be conducted by urinalysis. Alcohol testing will be conducted by a breath alcohol technician (BAT) using a breath testing device.

HOW IS DRUG TESTING DONE?

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). The driver provides a urine specimen in a location that affords privacy and security; and the "collector" seals and labels the specimen, has the driver initial specimen bottles, completes a chain of custody document, which is signed by the donor, 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 CDL 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". Testing for drugs is highly reliable and ingesting poppy seeds or other non-controlled substances will not result in a false positive test.

All urine specimens are analyzed for the following drugs:

- Marijuana THC metabolite)
- Cocaine
- Amphetamines
- Opiates (including heroin)
- Phencyclidine (PCP)

HOW WILL ALCOHOL TESTING BE DONE?

The rules require breath testing using evidential breath testing (EBT) devices approved by the National Highway Traffic Safety Administration (NHTSA). The NHTSA periodically publishes a list of approved devices in the Federal Register. Two breath tests are required to determine that a person has a prohibited alcohol concentration. A screening test is conducted first. Any result less than a 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.

ARE TEST RESULTS CONFIDENTIAL?

All records are considered confidential and will not be shared with non-supervisory employees. Test results and other confidential information will only be released to the employer and the substance abuse professional who evaluates the extent of the problem. If the employee grieves or files a lawsuit, the information can then be released to the decision-maker, ie. hearing officer, arbitrator, judge, etc.

WHO CAN AUTHORIZE TESTING?

- > **Pre-employment** - personnel/appointing authority
- > **Post- Accident** - supervisor, agency official or law enforcement officer as mandated for fatality or moving violations.
- > **Reasonable Suspicion** - by trained designed supervisor(s).
- > **Random** - by computer generated or other random selection device.
- > **Return to Duty and Follow-up** - by authority of substance abuse professional.

WHAT ARE THE CONSEQUENCES FOR REFUSAL OR A POSITIVE TEST?

Refusal to submit to testing is prohibited and is a violation of the Act. The consequences for a refusal are therefore the same as if the person had submitted to testing and had failed the test. Under these circumstances the employee must be removed from performance of any safety-sensitive function until such time as he/she submits to testing and the results are negative for alcohol (or) controlled substance.

Drivers who have an alcohol concentration of 0.04 or greater cannot return to safety-sensitive duties until they have been evaluated by a substance abuse professional and have complied with any treatment recommendations to assist them with an alcohol problem. To further safeguard transportation safety, drivers who have any alcohol concentration of 0.02 but less than 0.04 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.

As with an alcohol misuse violation, a driver must be removed from safety-sensitive duty if he/she has a positive drug test result. Refer to your agency policy for further information on consequences.

WILL PRESCRIPTION MEDICATIONS AFFECT MY TESTING?

Prescription medications may affect test results. That is why a Medical Review Officer (MRO) will contact an employee who tests positive for drugs to determine if their use is under a doctor's prescription. In addition, employees must advise their supervisor if their ability to perform a safety-sensitive function is impaired by a medication. Reasonable accommodations will be made for the employee if possible.

IS PROFESSIONAL HELP AVAILABLE?

Yes. Contact your EAP (Employee Assistance Program) coordinator for information on available services.

WILL THE OMNIBUS TRANSPORTATION ACT BE ENFORCED?

Yes.