

U.S. DOT Regulatory Update

**New and Proposed Rules Affecting the Heating
Fuels Industry**

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Division of Authority at the U.S. DOT

Federal Motor Carrier Safety Administration (FMCSA)

Motor Carrier Safety CDL Requirements . Operating Authority
Hours of Service . Drug and Alcohol Testing . U.S. DOT Number
Equipment Requirements . Driver Medical Certification
Enforcement/ Roadside Inspections . On-Site Audits

Pipeline and Hazardous Material Safety Administration (PHMSA)

HAZMAT Transportation Safety . Shipping Papers and
Placarding . HAZMAT Registration . Driver HAZMAT Training .
Equipment Specifications . Testing and Inspection . Roadside
Inspections . On-Site Audits

New U.S. DOT Drug and Alcohol Clearinghouse Requirements

What is it?

- ▶ New electronic data base containing CDL drivers record of drug and alcohol violations

Purpose?

- ▶ The database is used to report and check driver drug and alcohol violations
- ▶ The database is used to ensure that drivers with drug and alcohol violations do not driver prior to required rehabilitation requirements

Who must use it?

- ▶ Employers, drivers, state licensing agencies and third party drug and alcohol testers must access the database

New U.S. DOT Drug and Alcohol Clearinghouse Requirements

Employer Responsibility

- ▶ **Employers are required** to query the Clearinghouse for current and prospective employees' drug and alcohol violations before permitting those employees to operate a commercial motor vehicle
- ▶ **Employers are required** to upload driver drug and alcohol violation information
- ▶ **Employers must** register in the Clearinghouse to access the Clearinghouse database
- ▶ **Employers must** receive driver electronic consent to view individual violation information
- ▶ **Employers must** identify a company administrator for the Clearinghouse

New U.S. DOT Drug and Alcohol Clearinghouse Requirements

CDL Driver Responsibility

- ▶ ***Drivers are required*** to enter their CDL information during their Clearinghouse registration
- ▶ ***Drivers must*** provide employers with an electronic consent for third party access to records

Violations in Database

- ▶ Only drug and alcohol violations occurring after January 6, 2020 are recorded in the database

Driver Notification

- ▶ FMCSA will contact the driver via mail when new violations are posted

Drug and Alcohol Clearinghouse Requirements

Third Party Responsibility

- ▶ **State licensing agencies must** query the database whenever a driver applies, renews, upgrades or transfers a CDL license
- ▶ **Drug and alcohol testers must** upload violation information
- ▶ **Prospective employers must** query database as part of new employee hiring process
- ▶ **Enforcement Authorities may** query the database for individual driver information

Compliance Deadline

All responsible parties (except state agencies) must register with, and begin using the database as required no later than :



January 6, 2020



Drug and Alcohol Clearinghouse Requirements

Online Registration

<https://clearinghouse.fmcsa.dot.gov/>

Cannibidoil (CBD) and U.S. DOT Drug Testing

What is it?

- ▶ Popular and legal natural “remedy” used for many common ailments.
- ▶ Largely sold in convenience stores and through online purchase
- ▶ One of the 400 chemical compounds found in cannabis.
- ▶ Causes the sensation of getting “high” that’s often associated with marijuana.

Problem

- ▶ Use of CBD oil, even if derived from hemp, can result in a positive drug test

Cannibidoil (CBD) and U.S. DOT Drug Testing

Federal Regulatory Prohibitions

- ▶ The use of THC by CDL drivers, *in any form*, is prohibited
- ▶ It does not matter that state law allows such use
- ▶ Medical and recreational marijuana and CBD oils are **banned** under U.S. DOT regulations, legal or otherwise
- ▶ Medical review officers (drug and alcohol testers) **must not** take the legal medicinal use of marijuana or CBD oil into consideration when determining a driver's drug test result.
- ▶ If THC is detected it results in a positive drug test
- ▶ Employers must remove from duty a CDL driver until specific steps in the DOT return-to-duty protocol are successfully completed.

Placarding Cargo Tanks to the Lowest Flash Point

New U.S. DOT (PHMSA) Regulatory Interpretation

- ▶ Prohibits placarding a cargo tank vehicle to the lowest flash point for alternating straight loads of diesel fuel and gasoline
- ▶ Use UN1203 gasoline placard in place of the NA1993 placard for diesel fuel.

Old Interpretation

- ▶ Allowed for split loads and straight loads of gasoline and diesel or heating oil

New Interpretation

- ▶ Allowed only for split loads. (Gasoline must be present in at least one compartment to use UN1203).



Placarding Cargo Tanks to the Lowest Flash Point

Problems

- ▶ Drivers now must change placards between hauling loads of gasoline and diesel fuel unless one compartment contains gasoline.
- ▶ Empty compartment that held gasoline counts if not cleaned and purged.
- ▶ Enforcement varies state to state as enforcement authorities question the new interpretation.
- ▶ Uneven enforcement
- ▶ Working on a regulatory fix to go back to the former interpretation

New U.S DOT Interpretation on Cargo Tank Leak Testing

- ▶ U.S. DOT requires cargo tanks transporting petroleum to be undergo leak tests according to the agency's own test standard ("K Test")
- ▶ Test type and date are marked on the cargo tank vehicle and checked at roadside inspections
- ▶ Exception - EPA Method 27 leak test may be used in lieu of the DOT leak test for specification cargo tanks in ***dedicated*** gasoline service only
- ▶ Cargo tanks that transport heating oil, kerosene, diesel fuel, jet fuel or biodiesel must use the U.S. DOT leak test and cannot use EPA Method 27

New U.S DOT Interpretation on Cargo Tank Leak Testing

Problem

- ▶ Many cargo tanks that are not in dedicated gasoline service have been leak tested according to Method 27 due to confusion of terms
- ▶ These cargo tanks are being pulled out of service at roadside inspections for non-compliance with DOT leak test requirements

Why the Leak Test Confusion?

- ▶ PHMSA regulatory language limits Method 27 to cargo tanks hauling “*petroleum distillates*”
- ▶ The petroleum industry defines distillates as diesel, heating oil, kerosene, jet fuel, etc. but *not* gasoline.
- ▶ PHMSA and EPA define “petroleum distillates” as fuels with a RVP of 4.0 psi or greater

New U.S DOT Interpretation on Cargo Tank Leak Testing

- ▶ The only fuel with an RVP greater than 4.0 is *gasoline*

Bottom Line

- ▶ Cargo tanks hauling heating oil, diesel and other distillates *must be* leak tested according to the U.S. DOT leak test
- ▶ Cargo tanks in *dedicated* gasoline service *may* use EPA Method 27 in lieu of the U.S. DOT leak test
- ▶ Cargo tanks that haul both gasoline and heating oil, diesel fuel etc. in split loads or alternating straight loads *must be* leak tested according to the U.S. DOT leak test *and* the EPA Method 27
- ▶ Method 27 is required by EPA for cargo tanks equipped with vapor recovery equipment
- ▶ To see U.S. DOT interpretation, google “Method 27 safety advisory”

FMCSA Proposed Changes to Driver Hours of Service Requirements

FMCSA proposed the following changes to driver hours service regulations

Short Haul Drivers

- ▶ Expand the 100 air-mile radius exception for short haul carriers from recording driver daily HOS to 150 miles
- ▶ Lengthen driver on duty time under the short haul exception from the current 12 hours daily maximum to 14 hours
- ▶ NEFI asked for this change to provide flexibility in scheduling drivers and remove transport drivers from the electronic HOS recording requirements

FMCSA Changes to Driver Hours of Service

FMCSA is also proposing to:

- ▶ Extend the maximum daily on-duty time under the adverse driving conditions exception from 14 hours to 16 hours during which driving is permitted
- ▶ Allow driver one off-duty break for at least 30 minutes, but not more than 3 hours
 - ▶ This would interrupt the daily maximum daily on-duty period for loading and unloading activities up to 3 hours
 - ▶ Drivers interrupting the on-duty period must take 10 consecutive hours off-duty at the end of the work shift
 - ▶ Question: Can this apply to waiting time at terminals?

Questions?

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