
29 C.F.R. § 801.13

Exemption of employers authorized to manufacture, distribute, or dispense controlled substances.

(a) Section 7(f) provides an exemption from the Act's general prohibition regarding the use of polygraph tests for employers authorized to manufacture, distribute, or dispense a controlled substance listed in schedule I, II, III, or IV of section 202 of the Controlled Substances Act (21 U.S.C. 812). This exemption permits the administration of polygraph tests, subject to the conditions set forth in sections 8 and 10 of the Act and §§ 801.21, 801.22, 801.23, 801.24, 801.25, 801.26, and 801.35 of this part, to:

(1) A prospective employee who would have direct access to the manufacture, storage, distribution, or sale of any such controlled substance; or

(2) A current employee if the following conditions are met:

(i) The test is administered in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacture, distribution, or dispensing of any such controlled substance by such employer; and

(ii) The employee had access to the person or property that is the subject of the investigation.

(b)

(1) The terms *manufacture*, *distribute*, *distribution*, *dispense*, *storage*, and *sale*, for the purposes of this exemption, are construed within the meaning of the Controlled Substances Act (21 U.S.C. 812 *et seq.*), as administered by the Drug Enforcement Administration (DEA), U.S. Department of Justice.

(2) The exemption in section 7(f) of the Act applies only to employers who are authorized by DEA to manufacture, distribute, or dispense a controlled substance. Section 202 of the Controlled Substances Act (21 U.S.C. 812) requires every person who manufactures, distributes, or dispenses any controlled substance to register with the Attorney General (*i.e.*, with DEA). Common or contract carriers and warehouses whose possession of the controlled substance is in the usual course of their business or employment are not required to register. Since this exemption is intended to apply only to employees and prospective employees of persons or entities registered with DEA, and is not intended to apply to truck drivers employed by persons or entities who are not so registered, it has no application to employees of common or contract carriers or public warehouses. Truck drivers and warehouse employees of the persons or entities registered with DEA and authorized to manufacture, distribute, or dispense controlled substances, are within the scope of the exemption where they have direct access or access to the controlled substances, as discussed below.

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