

Tracking Commercial Drivers Who Violate Rules

The Federal Motor Carrier Safety Administration (FMCSA) has amended regulations to establish requirements for use of the Commercial Driver's License Drug and Alcohol Clearinghouse, a national database that will operate under its jurisdiction.

The rule took effect Jan. 4, 2017, with a compliance date of Jan. 6, 2020, to allow time for implementation.

What is the Clearinghouse?

The clearinghouse will be used to maintain records of federal drug and alcohol program violations in an accessible, centralized repository. Employers will be required to query the system to determine whether current and prospective employees have incurred a drug or alcohol violation that would prohibit them from performing safety-sensitive functions under FMCSA and U.S. Department of Transportation (DOT) regulations.

In general, a safety-sensitive position refers to a job in which the employee is responsible for his or her own or other people's safety. It also refers to jobs that would be particularly dangerous if performed under the influence of drugs or alcohol.

Commercial drivers who violate drug and alcohol regulations are required to complete a return-to-duty process – including a professional evaluation and a recommended education or treatment program – before an employer may allow them to operate a truck, bus or other commercial motor vehicle on public roads.

The tracking system is intended to improve transportation safety by making it difficult for drivers to conceal violations when they change employers, move to another jurisdiction or apply for a license. Records of violations will remain in the clearinghouse for five years, or until a driver has completed the return-to-duty process.

In addition to regulated employers and commercial motor vehicle operators, the rule affects:

- Medical review officers (MROs) who evaluate and follow up on test results
- Substance abuse professionals (SAPs) who assist with counseling and rehabilitation
- Consortia/third party administrators (C/TPAs) who help employers manage programs

How Will the Process Work?

Covered employers will be required to search the clearinghouse for information during the employee recruitment process and at least once a year for all currently employed drivers. Under the regulations, all service agents will be required to report information related to violations of drug and alcohol regulations contained in the Code of Federal Regulations (49 CFR, Parts 40 and 382). For example:

- MROs and designated employer representatives will report information about positive drug test results, alcohol test results greater than 0.04 blood-alcohol content, refusals to test and any non-test violations.



- SAPs will report information about drivers undergoing the return-to-duty drug and alcohol rehabilitation process.
- State driver licensing agencies will query the clearinghouse whenever a commercial driver's license is issued, renewed, transferred or upgraded.

What are Violations?

[Part 40](#), *Procedures for Transportation Workplace Drug and Alcohol Testing Programs*, describes requirements that apply to stakeholders in the regulated transportation industry, including employers, employees, MROs and collection sites. For example, under Part 40, Section 40.191, Subpart I(c), Problems in Drug Tests, commercial drivers who refuse to take a drug test "incur the consequences specified under DOT agency regulations for a violation of those DOT agency regulations."

According to Subpart B of [49 CFR, Part 382](#), Controlled Substances and Alcohol Use and Testing, commercial drivers performing safety-sensitive functions are in violation of federal rules if they:

- Report for duty or remain on duty while having an alcohol concentration of 0.04 or greater.
- Consume alcohol while performing safety-sensitive functions or within four hours of beginning a safety-sensitive assignment.
- Consume alcohol within eight hours following an accident or until undergoing a post-accident alcohol test, whichever occurs first.
- Refuse to submit to a required pre-employment controlled substance test, or an alcohol or controlled substance test under the following circumstances: post-accident, random, reasonable suspicion, return to duty or follow-up.
- Report for duty or remain on duty when using any drug or substance identified in [21 CFR 1308.11 Schedule I Controlled Substances](#).
- Report for duty or remain on duty when using any non-Schedule I drug or substance that is identified in the other schedules in 21 CFR part 1308, except when the use is pursuant to the instructions of a licensed medical practitioner who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect his or her ability to safely operate a commercial motor vehicle.
- Report for duty, remain on duty or perform a safety-sensitive function if they test positive or have been found to adulterate or substitute a test specimen for controlled substances.

An employer may require a driver to inform the employer of any therapeutic drug use.



What is the Return-to-Duty Process?

The following return-to-duty process applies to commercial drivers who violate federal drug and alcohol testing rules:

1. A qualified and trained SAP must conduct an in-person clinical evaluation of the employee.
2. The SAP recommends treatment and/or education for the employee.
3. The SAP sends a report to the employer outlining recommendations for treatment and/or education.
4. The SAP monitors the employee's progress in the recommended program.
5. When the SAP determines that the employee has made sufficient progress, the SAP schedules a follow-up employee evaluation.
6. Following the evaluation, the SAP reports to the employer that the employee either has or has not successfully complied with the program.
 - If the employee successfully completes the program, the employer may arrange for a return-to-duty substance test. The employer still has the option of discontinuing employment.
 - If the SAP reports that the employee has not successfully completed the recommended program, the employer cannot return the employee to safety-sensitive functions.
7. An employee who has not successfully complied with the SAP's recommendation may not return to safety-sensitive functions for any DOT employer until recommendations have been fully met and the employee is able to provide a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02.

The DOT requires the SAP to schedule a minimum of six tests over a 12-month period, but the process may continue for up to five years. Return-to-duty and follow-up tests must be taken under direct observation.



Refer to WorkCare's fact sheet on drug-free workplace mandatory guidelines for urine testing to learn more about changes in substance testing requirements for covered federal agencies.

What is a Medical Review Officer?

A Medical Review Officer (MRO) is a licensed physician and who is trained and certified to review laboratory findings and evaluate medical explanations for results generated by an employer's drug testing program.

The MRO role is designed to function as an independent and impartial advocate for the accuracy and integrity of the drug testing process. MROs receive laboratory-confirmed urine drug test results; determine whether there is a legitimate medical explanation for a confirmed positive, adulterated or substituted result; and review and report a verified result to the designated employer representative in a timely and confidential manner.

WorkCare's MROs provide these services through our Medical Exams & Travel division. To learn more, contact WorkCare. Regulations concerning MROs and the verification process are found in [49 CFR, Part 40, Subpart G](#). The FMCSA describes the MRO's role on a dedicated [website](#).

