



# DRUG & ALCOHOL: HOW IT IMPACTS EMPLOYMENT

# Drug Testing

01

Types of Testing

02

Employer  
Responsibilities

03

CDL  
Clearinghouse

# TYPES OF TESTING

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DOT vs NON-DOT

# What is DOT Testing?

- All CDL drivers operating commercial motor vehicles (CMVs) (greater than 26,000 GVWR, or transporting more than 16 passengers, including the driver, or placarded hazardous materials) on public roadways must be DOT drug and alcohol tested.
- This applies to any driver required to possess a CDL, including those employed by Federal, State, and local government agencies.

# What to test for

Marijuana

Cocaine

Opiates — opium and  
codeine derivatives

Amphetamines and  
methamphetamines

Phencyclidine — PCP

# Testing Procedure

- Once notified to report for testing, a CDL driver must report to the collection site immediately
- DOT drug testing NOW recognizes both urinalysis and “oral fluid” as a valid means for drug testing.
  - If problems are identified, a driver may be required to retest under direct observation.
  - A driver is only permitted three hours to produce a urine specimen.
- Once tested, the laboratory will report the analysis to a MRO. If the analysis indicates a positive result, the MRO will contact the driver to determine whether there are circumstances that would explain the positive result. If there are none, the MRO will report a positive result to the employer.





# DOT "CBD" NOTICE

## What you need to know:

- **A positive test for THC is a positive test for “marijuana”**
- The DOT requires testing for marijuana and not CBD.
- CBD products may contain more THC than what the label lists.
- The DOT does not authorize the use of Schedule I drugs, including marijuana, for any reason and that **CBD use is not a legitimate explanation for laboratory-confirmed marijuana positive result.**
- It is unacceptable for any safety-sensitive employee subject to DOT's drug testing regulations to use marijuana.
- [www.transportation.gov/odapc/cbd-notice](http://www.transportation.gov/odapc/cbd-notice)

If you're concerned you may fail a drug test based on your employment or activity guidelines, then full spectrum CBD and Delta 9 products may not be the right choice for you.

## **Immunoassay Testing**

Urine, blood, and saliva are the three things most often used during Enzyme Immunoassay (EIA) testing, although urine testing is typically the go-to for drug testing. As for how long Delta 9 can stay in your system after use, the answer varies depending on the type of sample taken, which test is used, and how often/how much THC you consume.

- Urine testing: Delta 9 THC is typically detectable in urine for about three to 30 days after use.
- Saliva testing: Delta 9 can be found in saliva up to 72 hours after use, depending on what test is used.
- Blood testing: Delta 9 THC is usually detectable in blood for around 36 hours after use.



# When to Test: Pre-Employment

- Pre-Employment
  - New drivers must be drug tested with a negative result before an employer can permit them to operate a CMV on a public road. Alcohol testing is permitted only if it applies to all CDL drivers. If a driver is removed from a random testing pool for more than 30 days, the driver must again be pre-employment tested.

# Post-Accident

Type of Accident Involved	Citation Issued to the CMV Driver	Test Must Be Performed by Employer
Human Fatality	Yes	Yes
Human Fatality	No	Yes
Bodily Injury With Immediate Medical Treatment Away From the Scene	Yes	Yes
Bodily Injury With Immediate Medical Treatment Away From the Scene	No	No
Disabling Damage to Any Motor Vehicle Requiring Tow Away	Yes	Yes
Disabling Damage to Any Motor Vehicle Requiring Tow Away	No	No

The alcohol test must occur within 8 hours, and the drug test must occur within 32 hours.

# When to Test: Random

- CDL drivers are subject to unannounced random testing. A driver may be directed to take a drug test even when at home in an off-duty status. Random alcohol testing may only occur when the driver is on-duty or immediately before or after. Once notified to report for random testing, the driver must immediately report to the testing location. A delayed arrival may be considered a refusal (see 49 CFR 40.191), which is equivalent to testing positive

# Random Testing—is it truly random?

- Reminder: DOT and non-DOT random testing pools must be completely separate.
- Third party administrators can group all their DOT regulated drivers into a pool.
- Everyone in the pool must have an equal chance of being selected and tested in each selection period.
- Warning: Unacceptable random selection practices include selecting numbers from a hat, rolling dice, throwing darts, picking cards, or selecting ping pong balls.
- in a truly random selection process, a high probability exists that some employees will be selected several times while others may never be selected.
  - Why? Because after each selection, the employee's name is returned to the same pool, and he or she becomes just as likely as anyone else to be selected next time.

# When to Test

- Reasonable Suspicion
  - DOT-trained supervisors can direct a driver to be drug or alcohol tested whenever he or she exhibit signs of drug or alcohol abuse. The decision must be based on observations concerning the appearance, behavior, speech, or body odors of the driver.
- Return-to-Duty
  - Return-to-duty tests require “direct observation” as prescribed in 49 CFR 40.67. They are only required after an employee has completed the “return-to-duty” process, before returning to perform a safety sensitive function (i.e., driving CMVs).
- Follow-up:
  - – Follow-up drug and alcohol tests are required as prescribed by the substance abuse professional (SAP) who signs the return-to-duty report. They consist of a minimum of at least six unannounced directly observed tests conducted during the first 12 months following the return-to-duty test. The SAP can prescribe follow-up testing for a maximum of 5 years for drivers who have tested “positive” or “refused to test.” Follow-up testing is in addition to any selections for random testing.

## How does the Clearinghouse fit into the RTD process?

The return-to-duty (RTD) process outlined in Part 40 Subpart O has not changed. The graphic below illustrates how the reporting requirements detailed in § 382.705 fit into this process.

### LEGEND



Driver



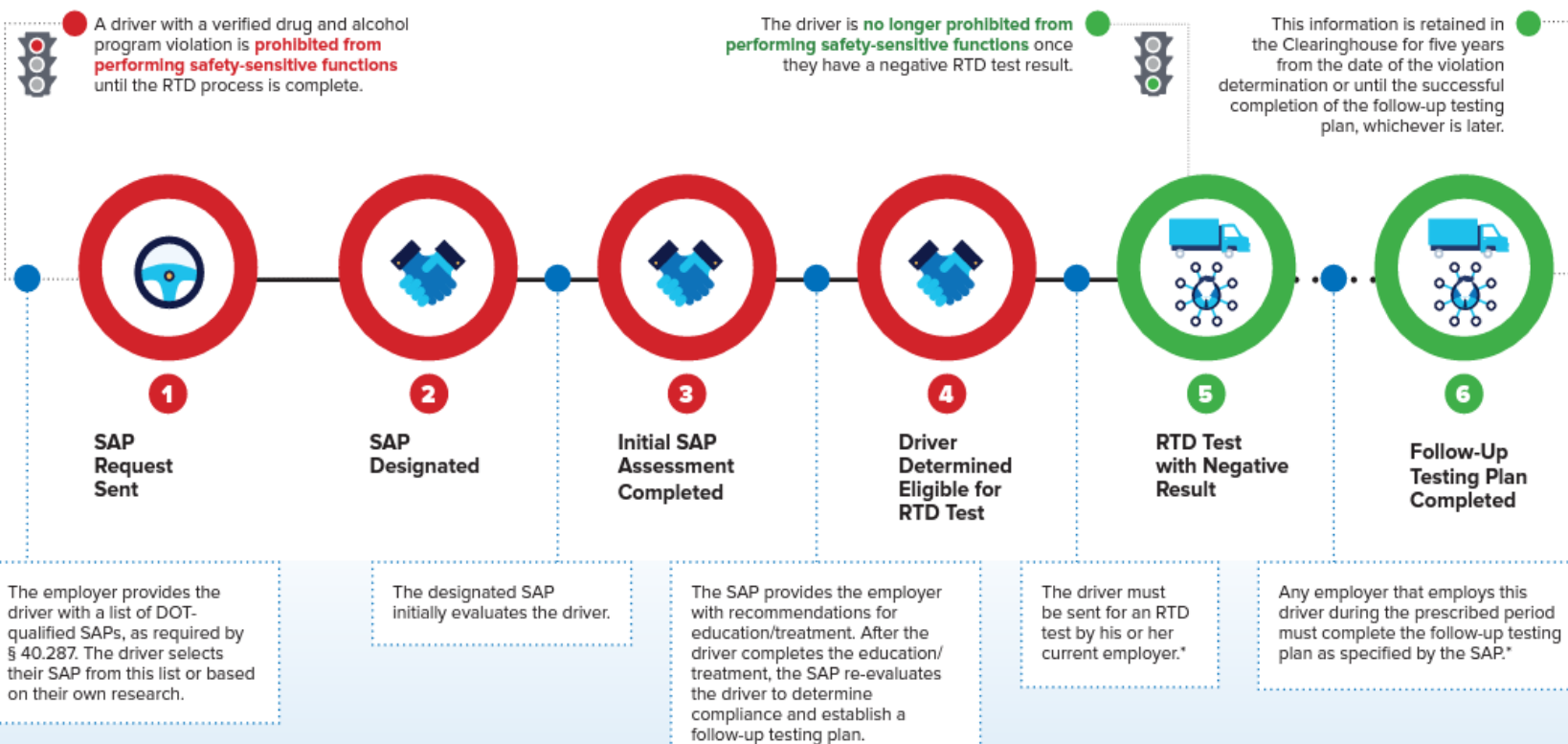
Employer



SAP



C/TPA

 RTD steps not recorded in the Clearinghouse

*\*In the case of an owner-operator, these steps must be completed by a designated C/TPA.*



IF YOU ARE A DESIGNATED C/TPA REPORTING RTD INFORMATION ON AN EMPLOYER'S BEHALF, SEE THE [REPORTING RTD INFORMATION FOR C/TPAs JOB AID](#) FOR INSTRUCTIONS.

### Which types of RTD information are employers responsible for reporting?

Both employers and substance abuse professionals (SAPs) are required to report information about a CDL driver's RTD process in the Clearinghouse, per §[382.705](#). The table below identifies who is responsible for reporting specific information to the Clearinghouse throughout the RTD process. [Learn more about the RTD process.](#)

Responsible Reporting Entity	RTD Information Reported to the Clearinghouse	Timeframe for Reporting
Designated SAP	Date of initial SAP assessment	SAPs must report the date of completion of an initial SAP assessment and the date of determination of eligibility for RTD testing by the close of the business day following the assessment or determination.
	Date the driver is determined eligible for RTD testing	
Employer of CDL Driver*	Negative RTD test result(s)	Employers must report RTD information by the close of the third business day following the date on which the employer obtained the information.
	The date the driver's follow-up testing plan is successfully completed	



# EMPLOYER RESPONSIBILITIES

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1. Policy & Materials
2. Supervisor Training

# Policies & Materials → Section § 382.601

- develop a written policy on controlled substances use and alcohol misuse in the workplace
- Provide educational materials to the CDL drivers & require the driver to sign a certification that they received both the materials and the policy.
- Each employer shall maintain the signed certificate and may provide a copy of the certificate to the driver.

# Required Content Continued

- The materials to be made available to drivers shall include detailed discussion of at least the following:
- (1) The identity of the person designated by the employer to answer driver questions about the materials;
- (2) The categories of drivers who are subject to the provisions of this part;
- (3) Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance with this part;
- (4) Specific information concerning driver conduct that is prohibited by this part;
- (5) The circumstances under which a driver will be tested for alcohol and/or controlled substances under this part, including post-accident testing under § 382.303(d);

# Required Content

- (6) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by § 382.303(d);
- (7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this part;
- (8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;
- (9) The consequences for drivers found to have violated subpart B of this part, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under part 40, subpart O, of this title;
- (10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;

# Required Content Continued

- **(11)** Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management; and
- **(12)** The requirement that the following personal information collected and maintained under this part shall be reported to the Clearinghouse:
  - **(i)** A verified positive, adulterated, or substituted drug test result;
  - **(ii)** An alcohol confirmation test with a concentration of 0.04 or higher;
  - **(iii)** A refusal to submit to any test required by subpart C of this part;
  - **(iv)** An employer's report of actual knowledge, as defined at § 382.107:

# Required Content Continued

- (A) On duty alcohol use pursuant to § 382.205;
- (B) Pre-duty alcohol use pursuant to § 382.207;
- (C) Alcohol use following an accident pursuant to § 382.209; and
- (D) Controlled substance use pursuant to § 382.213;
- (v) A substance abuse professional (SAP as defined in § 40.3 of this title) report of the successful completion of the return-to-duty process;
- (vi) A negative return-to-duty test; and
- (vii) An employer's report of completion of follow-up testing.

# Supervisor Training

- Each employer shall ensure that all persons designated to supervise drivers receive at least **60 minutes** of training on alcohol misuse and receive at least **an additional 60 minutes** of training on controlled substances use.
- The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing.
- The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.
- Recurrent training for supervisory personnel is not required.
  - Can accept proof of training from a prior employer

<https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/ReasonableSuspicion.aspx>



# CDL CLEARINGHOUSE

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# RECORDKEEPING--382.401

- Employers covered under DOT drug & alcohol testing regulations must maintain records that document their testing program
- **What do I keep:** Employers are required to keep the following documents:
  - Test results.
  - Testing process administration.
  - Return-to-duty process administration.
  - Employee training.
  - Supervisor training.
- **How do I keep them:** All DOT drug & alcohol test records must be kept in a secure location with controlled access. Records should be in locked file cabinets. If records are kept electronically, they should be password protected.
- **May a consortium or Third-Party Administrator keep the records:** Yes, you may arrange to have a consortium or third-party administrator keep some or all of your records. You do not have to maintain a duplicate set of records, but ultimately, it is the employer's responsibility to ensure procedures are in place that guarantee accurate and current records are saved according to DOT regulations.
- **How long must I keep records:**

# HOW LONG TO KEEP RECORDS

1 Year: Negative drug test results.  
Alcohol test results less than 0.02.

2 Years: Records related to the alcohol and drug collection process.

3 Years Previous employer records.

5 Years: Annual MIS reports.  
Employee evaluation and referrals to SAPs.  
Follow-up tests and follow-up schedules.  
Refusals to test.

Alcohol test results 0.02 or greater. Verified positive drug test results.

Indefinite period: Education and Training records, plus two years after ceasing to perform functions.

# Cont...

- **Do I have to keep paper files:** Yes. Employers may also keep electronic records for their own purposes, but DOT requires that paper records be kept.
- **As an employer what records do I release to other employers:** You must provide all the information in your possession concerning employee's DOT drug & alcohol tests that occurred in the three years preceding the request.\* This includes information you received from a former employer.
- **Note:** If you provide information about an employee's DOT drug & alcohol tests obtained from a former employer dating back more than three years, this is not a violation of DOT regulations or DOT agency rules.

# Queries

- **How does the Clearinghouse impact employers of commercial driver's license (CDL)?**
- The Clearinghouse offers employers a centralized location to query driver information and report drug and alcohol program violations incurred by their current and prospective employees holding CDLs and CLPs. The employer must use the Clearinghouse to:
- Conduct a full query of the Clearinghouse as part of each pre-employment driver investigation process. Conduct limited queries at least annually for every driver they employ.
- Request electronic consent from the driver for a full query, including pre-employment queries. Report drug and alcohol program violations.
- Record the negative return-to-duty (RTD) test results and the date of successful completion of a follow-up testing plan for any driver they employ with unresolved drug and alcohol program violations.

# Which drivers?

- Are employers required to query the Clearinghouse or report drug and alcohol program violations for drivers who do not hold a commercial driver's license (CDL)?
  - No, employers of drivers not holding a CDL must still comply with the driver investigation requirements of § 391.23(e), which includes drug and alcohol violation history.

# Limited vs. full

- **What is the difference between a full and limited query?**
- A limited query allows an employer to determine if an individual driver's Clearinghouse record has any information about resolved or unresolved drug and alcohol program violations; but does not release any specific violation information contained in the driver's Clearinghouse record.
  - require only a general driver consent, which is obtained outside the Clearinghouse;
  - this general consent is not required on an annual basis, it may be effective for more than one year. However, the limited consent request must specify the timeframe the driver is providing consent for.
- A full query allows the employer to see detailed information about any drug and alcohol program violations in a driver's Clearinghouse record. An employer must obtain the driver's electronic consent in the Clearinghouse prior to the release of detailed violation information during the full query.



# When to Conduct the Annual Query

**Is the annual requirement for employee queries based upon the calendar year or by hire date?**

Employees must be queried at least once within a 365-day period based on their hire date, or another 12-month period determined by the employer.

# Circumstances Required to Report

- Employers must report the following information to the Clearinghouse:
  - An alcohol confirmation test result with an alcohol concentration of 0.04 or greater;
  - A CDL driver's refusal to submit to a Department of Transportation (DOT) test for drug or alcohol use;
  - Actual knowledge, as defined in § 382.107;
  - The negative RTD test results;
  - The date the driver successfully completed all follow-up tests as ordered by the substance abuse professional (SAP).

# When to Report

What is the timeframe in which an employer must submit a report of an employee's drug and alcohol program violation to the Clearinghouse?

- Employers are required to report a drug and alcohol program violation by the close of the third business day following the date on which the employer obtained the information.

What are the repercussions if an employer does not meet the required timeframe for reporting a violation?

- The employer may still report the drug and alcohol program violation even if the required timeframe has passed. However, the Clearinghouse captures the date the violation was reported. This information may be reviewed during an investigation of the employer's operations and compliance with the Federal Motor Carrier Safety Regulations.

# What to Report

- What information is an employer required to report to the Clearinghouse when reporting actual knowledge that a CDL driver used alcohol or controlled substance
  - Driver's name, date of birth, commercial driver's license (CDL) number and State of issuance; Employer name, address, and USDOT number, if applicable;
  - Date the employer obtained actual knowledge of the violation; Witnesses to the violation, if any, including contact information; Description of the violation;
  - Evidence supporting each fact alleged in the description of the violation, which may include, but is not limited to, affidavits, photographs, video or audio recordings, employee statements (other than admissions pursuant to § 382.121), correspondence, or other documentation; and
  - A certificate of service or other evidence showing that the employer provided the employee with all information reported.

# Common Questions

- **Question #1:** DUI in a personal vehicle while off-duty and not on-call
- **Question #2:** DUI in a personal vehicle but on-call
- **Question #3:** Alcohol level below 0.04
- **Question #4:** Alcohol level above 0.04
- **Question #5:** Is the follow-up period in the RTD process really 5 years?
- **Question #6:** why is a refusal the equivalent to a positive?
- **Question #7:** What about marijuana use while on vacation in Colorado?