

Federal Motor Carrier Safety Administration (FMCSA) Holding CMV Drivers Accountable

Article

Amundsen Davis Transportation Alert

April 2, 2024

Big changes are in store for commercial driver's license (CDL) holders who test positive for drugs or alcohol. In October 2021, FMCSA issued a final rule aimed to improve highway safety. Under the rule, CDL holders with drug and/or alcohol testing violations may not operate a commercial motor vehicle until they complete the "return to duty" (RTD) process. This rule was enacted in 2021, but compliance is not required until November 18, 2024.

Most state driver's licensing agencies do not access and use information obtained through the Drug and Alcohol Clearinghouse. The Clearinghouse is a **secure online database** that gives employers, FMCSA, State Driver Licensing Agencies (SDLAs), and state law enforcement personnel real-time information about CDL and commercial learner's permit (CLP) holders' drug and alcohol program violations. Companies that employ or train CDL drivers are required to register with the Clearinghouse to check for and report driver violations for positive drug or alcohol tests. Employers are required to report the following information to the Clearinghouse:

- any refusal to take a drug or alcohol test;
- any positive drug test; any alcohol test of .04% or higher;
- knowledge that an employee has used a controlled substance;
- knowledge that an employee has used alcohol while on duty or four hours before coming on duty;
- RTD tests with negative results; and/or successful completion of RTD testing.

The FMCSA requires CDL drivers to submit to drug and alcohol testing in a variety of circumstances, including pre-employment, after any accident that involves a fatality or traffic citation resulting from an injury or vehicle-disabling accident, random testing, or when a supervisor has reasonable suspicion of drug or alcohol use.

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Under the new rule, licensing agencies will be required to refrain from issuing or renewing CDL's or CLP's (permits) for any individual that has a drug or alcohol violation posted in the Clearinghouse.

Another important feature of the rule requires states receiving grants from the Motor Carrier Safety Assistance Program (MCSAP) to adopt a compatible commercial motor vehicle driving prohibition policy for CLP and CDL holders who violate FMCSA's drug and alcohol program requirements. Currently, all states receive grants from MCSAP.

If a CDL driver violates a FMCSA drug or alcohol policy, they will be required to complete the stringent return to duty (RTD) process prescribed in 49 CFR 40.67. This process entails direct observation tests and approval from a substance abuse professional. The driver must complete a substance abuse evaluation, education, and treatment program as prescribed by the substance abuse professional. This education and treatment can include conditions, such as attending self-help groups, community lectures, substance abuse education courses, in-patient hospitalization, or out-patient counseling.

After a substance abuse professional determines that an employee has successfully completed the prescribed education and/or treatment, the employee must take an RTD test and obtain negative results. Drivers must then complete follow up testing with employers including a minimum of six unannounced follow-up tests in the first 12 months of returning to driving. These requirements are likely one of the main reasons why many drivers with violations opt not to complete the RTD process and leave the profession altogether. As of January 4 2023, 91,523 drivers out of 166,296 with at least one test violation had not started the RTD process.

There have been 235,221 drug and alcohol violations reported to the Clearinghouse. The vast majority of the violations (130,414) result from marijuana detection with either pre-employment or random testing. Truck drivers are prohibited from using marijuana and positive tests are likely to increase as more states legalize its use.

By requiring state licensing agencies to check the Clearinghouse for drug and alcohol violations before issuing or renewing a CDL, the FMCSA seeks to hold CDL holders accountable and improve highway safety. This rule will likely make it more difficult for the trucking industry to fill vacancies and retain drivers.

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