



# Worker Safety and Health

## Driver Regulatory Update

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IBT Safety and Health Department

**TEAMSTERS SAFETY AND HEALTH**  
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Today I will provide you with an overview of changes to federal safety regulations that affect commercial drivers, including Commercial Driver's License (CDL) and non-CDL drivers. During my presentation, we will have the opportunity to discuss any questions you may have regarding the regulations.



## TEAMSTERS SAFETY AND HEALTH

### Federal Motor Carrier Safety Administration

The FMCSA was established within the Department of Transportation on January 1, 2000, pursuant to the Motor Carrier Safety Improvement Act of 1999.

- **Primary mission**

- Prevent commercial motor vehicle-related fatalities and injuries. The Administration seeks to accomplish its mission by:
  - Ensuring safety in motor carrier operations through creation and enforcement of safety regulations
  - Targeting high-risk carriers and commercial motor vehicle drivers
  - Improving safety information systems and commercial motor vehicle technologies
  - Strengthening commercial motor vehicle equipment and operating standards
  - Increasing safety awareness

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The Teamsters Union was instrumental in the creation of the FMCSA. Prior to its establishment, interstate trucking was regulated by the Office of Motor Carriers, which was a small office in the bowels of the Federal Highway Safety Administration. By establishing the FMCSA, we were able to give trucking equal treatment as compared to the aviation, shipping, and rail transportation.



## TEAMSTERS SAFETY AND HEALTH

### FMCSA – [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov)

#### Activities

- **Commercial Drivers' Licenses**
  - The Administration develops standards to test and license commercial motor vehicle drivers.
- **Data and Analysis**
  - The Administration collects and disseminates data on motor carrier safety and directs resources to improve motor carrier safety.
- **Regulatory Compliance and Enforcement**
  - The Administration operates a program to improve safety performance and remove high-risk carriers from the Nation's highways.
- **Research and Technology**
  - The Administration coordinates research and development to improve the safety of motor carrier operations and commercial motor vehicles and drivers.

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The Teamsters Union works closely with the agency in an advisory capacity. The Safety and Health Director, Lamont Byrd, currently serves as the Vice-Chairman of the Motor Carrier Safety Advisory Committee, which is comprised of stakeholder members from labor, public safety, industry, law enforcement, and government.



## TEAMSTERS SAFETY AND HEALTH

### FMCSA – [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov)

- **Safety Assistance**

- The Administration provides States with financial assistance for roadside inspections and other commercial motor vehicle safety programs. It promotes motor vehicle and motor carrier safety.

- **Other Activities**

- Supports the development of unified motor carrier safety requirements and procedures throughout North America.
- Participates in international technical organizations and committees to help share the best practices in motor carrier safety throughout North America and the rest of the world.
- Enforces regulations ensuring safe transportation of hazardous materials

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## TEAMSTERS SAFETY AND HEALTH

### Drug & Alcohol Testing

Federally Mandated Testing



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To provide a bit of background information for you regarding the regulatory requirements for drug and alcohol testing for commercial drivers, I have a few slides on this important topic.



## TEAMSTERS SAFETY AND HEALTH

### Federally Mandated Testing

These programs require employers to use urine testing for drugs and breath testing for alcohol

- Cocaine
- Phencyclidine
- Marijuana
- Amphetamines
  - Methamphetamine
- Codeine
- Morphine
- **Opioids\***
  - Hydrocodone
  - Oxycodone
  - Hydromorphone
  - Oxymorphone

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Federal drug testing programs require testing for these drugs and/or their metabolites. On January 1, 2018, the Federal testing panel will be expanded to include four opioids.



### Federally Mandated Testing

#### Types of testing

- Pre-employment
- Random
- Reasonable suspicion
- Post-accident
- Return to duty after a non-negative test result
- Unannounced follow up

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**Pre-Employment Testing** - Prior to the first time a driver performs safety-sensitive functions for an employer, the driver shall undergo testing for controlled substances as a condition prior to being used, unless the employer uses the exception in paragraph (b) of this section.

**Random Testing** - Every driver (who possesses a CDL and operates a CMV covered by the rule) shall submit to random alcohol and controlled substance testing as required in this section.

**Reasonable Suspicion Testing** - An employer shall require a driver to submit to an alcohol and/or controlled substances test when the employer has reasonable suspicion to believe that the driver has violated the regulations. The employer's determination must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.

**Post-Accident Testing** - As soon as practicable following a crash each employer shall test for alcohol and controlled substances for each of its surviving drivers: if there was a fatality; or the driver receives a citation within 8 hours of the occurrence (within 32 hours for controlled substances) under State or local law for a moving traffic violation arising from the accident, if the accident involved: Bodily injury to any person who, receives medical treatment away from the scene of the accident; or One or more vehicles incurred disabling damage requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

**Return-to-Duty Testing** – A driver who violated the drug and/or alcohol testing regulation, i.e., non-negative test result, refusal to test, etc., must submit to return-to duty testing and have a negative test result prior to resuming driving duties.

**Unannounced Follow Up Testing** – A driver who violated the drug and/or alcohol testing regulation

must submit to at least 6 unannounced follow up tests during the first 12 months of his/her return to duty, unless the Substance Abuse Professional who evaluates the driver determines that additional tests are necessary. The follow up testing period may be extended for an additional 48 month, per the SAPs recommendations.





## TEAMSTERS SAFETY AND HEALTH

### Federally Mandated Testing

- Specimen collection personnel must be properly trained
- Specimen collection facilities must meet specific requirements

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**Specimen Collection Personnel** – Must receive specific training on how to properly collect specimens. These technicians must also use/complete specific chain-of-custody forms (custody and control form).

### Collection Site Requirements

If you are operating a collection site, you must have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, temporary storage, and shipping of urine specimens to a laboratory, and a suitable clean surface for writing.

- \* Must include a facility for urination
- \* Must have a source of water for washing hands, that, if practicable, should be external to the closed room where urination occurs. If an external source is not available, you may meet this requirement by securing all sources of water and other substances that could be used for adulteration and substitution (*e.g.*, water faucets, soap dispensers) and providing moist towelettes outside the closed room.



## TEAMSTERS SAFETY AND HEALTH

### Federally Mandated Testing

- The specimen testing laboratories used must be approved by the Department of Health and Human Services per the National Laboratory Certification Program.

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As a drug testing laboratory located in the U.S., you are permitted to participate in DOT drug testing only if you are certified by HHS under the National Laboratory Certification Program (NLCP) for all testing required.

A list of approved laboratories is published in the Federal Register on a monthly basis.



### Federally Mandated Testing

- Testing conducted by the approved laboratory is a two-stage test
  - Screening (immunoassay)
    - Identifies the presence of drugs through a process that binds an antibody to antigens (drugs or metabolites)
    - There is a risk of a “false positive” as a result of cross reactivity with a substance of similar structure
  - Confirmatory (gas chromatography/mass spectroscopy)
    - Identifies drugs by looking at the unique mass/charge ratio

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The Screening Test is conducted to eliminate obvious negative specimens. If a screening test result exceeds the established cutoff level for one or more drugs, a confirmatory tests is conducted to provide final confirmation that the test result is positive. GC/MS is the “gold standard” for confirmatory drug testing.

If a donor has a test result that is not negative, he/she can request that the split specimen be tested. This specimen will be shipped to another approved laboratory for analysis.



### Federally Mandated Testing

- Laboratories use scientifically valid cut off levels for all of the drugs and metabolites for which testing is conducted
- Validity testing conducted to ensure that specimens have not been adulterated or substituted

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One of the key concepts within **drug testing** is the application of a **cut-off level**. This is the point which segregates a **test** result as being either positive or negative. If the concentration of a drug or its metabolite exceeds a certain threshold level, it is deemed “positive”. If the concentration of the drug or its metabolite is below the threshold level, it is deemed “negative” even if the drug or metabolite is present at a very low concentration.

Validity testing is conducted to determine if: 1. the specimen that was submitted for analysis is actually human urine, and; 2. there are foreign substances in the urine specimen, e.g., a chemical that has been added to mask or in some other way, defeat, the analytical process.



## TEAMSTERS SAFETY AND HEALTH

### Cutoff Levels

Initial Test Analyte	Initial Test Cutoff <sup>1</sup>	Confirmatory Test Analyte	Confirmatory Test Cutoff Concentration
Marijuana metabolites (THCA) <sup>2</sup>	50 ng/mL <sup>3</sup>	THCA	15ng/mL
Cocaine metabolite (Benzoylecgonine)	150 ng/mL <sup>3</sup>	Benzoylecgonine	100 ng/mL
Codeine/ Morphine	2000 ng/mL	Codeine Morphine	2000 ng/mL 2000 ng/mL
Hydrocodone/ Hydromorphone	300 ng/mL	Hydrocodone Hydromorphone	100 ng/mL 100 ng/mL
Oxycodone/ Oxymorphone	100 ng/mL	Oxycodone Oxymorphone	100 ng/mL 100 ng/mL
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL
Amphetamine/ Methamphetamine	500 ng/mL	Amphetamine Methamphetamine	250 ng/mL 250 ng/mL
MDMA <sup>4</sup> /MDA <sup>5</sup>	500 ng/mL	MDMA MDA	250 ng/mL 250 ng/mL

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These are the cutoff levels for the drugs for which testing is conducted. It should be noted that these levels do not, in any way, imply that a driver who tests positive was under the influence of, or otherwise impaired, by the drug(s) when the specimen was collected. Positive tests simply mean that the driver has, in some manner, ingested the drug(s) at some point prior to the collection of the specimen.

MDMA is also known as “Molly” and MDA is also known as “Sally”

Hydrocodone is also known as “Vicodin”

Hydromorphone is also known as “Dilaudid”

Oxycodone is also known as “Percocet”

Oxymorphone is also known as “Opana” or “Blue Heaven”



### Federally Mandated Testing

#### Medical Review Officer reviews all test results

- Ensures that all aspects of the specimen collection, chain-of-custody, and analytical procedures comply with regulations
- Consults with the donor prior to providing final validation of test result, if result is other than negative
- Instructs laboratory to allow the testing of a split specimen if the donor challenges the validity of the test result

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**Medical Review Officer (MRO)** - You must be a licensed physician (Doctor of Medicine or Osteopathy) and be knowledgeable in the following areas:

- (1) You must be knowledgeable about and have clinical experience in controlled substances abuse disorders, including detailed knowledge of alternative medical explanations for laboratory confirmed drug test results.
- (2) You must be knowledgeable about issues relating to adulterated and substituted specimens as well as the possible medical causes of specimens having an invalid result.
- (3) You must be knowledgeable about this part, the DOT MRO Guidelines, and the DOT agency regulations applicable to the employers for whom you evaluate drug test results, and you must keep current on any changes to these materials.



## TEAMSTERS SAFETY AND HEALTH

### Federally Mandated Testing

**If an employee tests positive, has an adulterated or substituted specimen, or refuses to submit to testing, prior to resuming driving or other safety-sensitive duties he/she:**

- Must submit to an evaluation by a Substance Abuse Professional
- Successfully complete recommended education and/or treatment
- Have a negative return to duty test result
- Participate in the recommended follow up testing

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Motor carriers and other employers are not obligated to retain drivers or other covered employees who test positive for drugs/alcohol. However, the employer must provide the employee with information regarding where to find a Substance Abuse Professional and education/treatment facilities. Covered employees may not resume driving or performing other safety-sensitive functions until he/she has been evaluated, treated, passes a return to duty test and participates in follow up testing....even if he/she changes employers.



## TEAMSTERS SAFETY AND HEALTH

### Federally Mandated Testing

#### Summary

- All aspects of the program must comply with stringent government regulations
- Training of all personnel involved in the testing process is required
- Laboratories are highly regulated and proficiency testing is required
- Cutoff levels for substances are established by the government
- Test results are reviewed by competent professions prior to final disposition
- Employees who violate testing requirements are provided with information concerning education/rehabilitation
- Strict return to duty process after rehabilitation

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- The testing programs are highly structured and regulated by government agencies.
- Employees who are subject to testing, designated employer representatives, specimen collectors, medical review officers, and substance abuse professionals must all be properly trained and credentialed.
- Laboratories that analyze specimens are on an approved list and meet all of the technical and regulatory requirements as set forth by the government.
- Test results are reviewed by technical/regulatory expert and the donor is contacted prior to determining if a specimen is not negative.
- Employers are required to provide employees who violate the testing regulations with information on how/where to obtain education and/or rehabilitation.
- If an employee is retained on his/her job after a non-negative test result, he/she must submit to a strict return to duty and follow up testing procedure.





## Federally Mandated Testing

### Alcohol Testing

- Is very similar to the drug testing program
  - Pre-employment testing is not required
  - Random
  - Post-Accident
  - Reasonable Suspicion
  - Return to Duty
  - Follow Up after a non-negative test result



## TEAMSTERS SAFETY AND HEALTH

### Federally Mandated Testing

#### Alcohol Testing

- Screening test can be administered via a breath test or a saliva test
- Government approved Evidential Breath Testing Devices are required for confirmatory testing
- Testing must be conducted
  - Immediately prior to performing safety-sensitive tasks
  - While performing safety-sensitive tasks
  - Immediately after performing safety-sensitive tasks



## TEAMSTERS SAFETY AND HEALTH

### Federally Mandated Testing

#### Alcohol Testing

- Breath Alcohol Testing Technician must be trained to use the type of EBT device being used
- If screening test is not negative, a confirmatory test must be conducted
  - Must wait 15 minutes before conducting the confirmatory breath test
- If test result in 0.02 BAC to 0.039 BAC, driver must be taken out of service for at least 24 hours
- If test result is 0.04 BAC or greater, driver must be evaluated by a SAP, complete recommended education/rehabilitation and provide a negative return to duty test prior to performing safety-sensitive tasks
- Must participate in a follow up testing program for at least one year.

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EBT device must be maintained and calibrated per the manufacturer's requirements.



## TEAMSTERS SAFETY AND HEALTH

### Drug and Alcohol Testing Clearinghouse

Applicable to DOT-CDL Qualified Drivers

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The clearinghouse will apply to all CDL drivers who operate commercial motor vehicles subject to the CDL requirements on public roads in the U.S. who are performing safety-sensitive functions and are subject to DOT drug and alcohol testing regulations ([§382.103](#)). This includes all full-time, part-time, intermittent, backup and international drivers.

Drug and Alcohol Clearinghouse will contain information from the following sources:

1. Random testing
2. Reasonable cause testing
3. Return to duty testing
4. Unannounced Follow-up Testing
5. Pre-employment
6. Post Accident



## TEAMSTERS SAFETY AND HEALTH

### Drug and Alcohol Clearinghouse

The Federal Motor Carrier Safety Administration conducted rulemaking and issued a Final Rule rule to establish a clearinghouse which will require the following:

- Create such a repository (database) for all non-negative drug and alcohol testing results
- Require employers to conduct pre-employment searches for all new CDL drivers and annual searches on current drivers.

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- ***The proposed rule would apply to persons and employers of such persons who operate CMVs in commerce in the United States and are subject to the CDL requirements in 49 CFR part 383 or the equivalent CDL requirements for Canadian and Mexican drivers.***
  - The proposed rule simply states that foreign carriers and drivers who are employed by such carriers must comply with the proposed rule or its equivalent. The union requested that the agency clarify how it intends to enforce this provision.
- ***Laboratories performing DOT drug testing for FMCSA-regulated employers will be required to file annual summary reports identifying the motor carrier employers for whom they performed testing services. The FMCSA will use the data provided by the laboratories to identify employers of CDL drivers that do not have an active drug and alcohol testing program.***
  - The union strongly supports this provision of the regulation as it will provide the agency important information to assist it in identifying and targeting for enforcement, motor carriers that may not be in compliance with the drug and alcohol testing regulations.
- ***FMCSA proposes to add a new §382.123 that would require employers to provide specific information on the Alcohol Testing Form (ATF) and Federal Drug Testing Custody and Control Form (CCF) that identifies drivers by use of their CDL number and State of issuance.***
  - The union supports this provision as it will help to protect drivers from identity theft. It has been widely reported by the media, that there have been significant security breaches of both databases used by private businesses and governmental agencies and the theft of personal identification information such as social security numbers resulted in identity theft for some individuals whose information was obtained.



## TEAMSTERS SAFETY AND HEALTH

### Drug and Alcohol Clearinghouse

#### The Final Rule will also require:

- FMCSA-regulated truck and bus companies, Medical Review Officers, Substance Abuse Professionals, and private, third party USDOT drug and alcohol testing laboratories to record information about a driver who:
  - Fails a drug and/or alcohol test;
  - Refuses to submit to a drug and/or alcohol test; and
  - Successfully completes a substance abuse program and is legally qualified to return to duty.

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- You fail a drug or alcohol test by testing positive to a drug test, or registering a 0.04 or greater alcohol content. Either of these results requires you to be immediately removed from performing safety-sensitive functions (i.e., driving CMVs) until successful completion of the return-to-duty process with a DOT-qualified substance abuse professional.
- Your refusal to submit to a drug or alcohol test is generally equivalent to testing positive to a drug or alcohol test. You must immediately be removed from performing safety-sensitive functions (i.e., driving CMVs) until successful completion of the return-to-duty process with a DOT-qualified substance abuse professional. The DOT regulations outline refusals to test for drugs and alcohol. § 40.191 What is a refusal to take a DOT drug test, and what are the consequences?

(a) As an employee, you have refused to take a drug test if you:

- (1) Fail to appear for any test (
  - (2) Fail to remain at the testing site until the testing process is complete;
  - (3) Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations;
  - (4) In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen (see §§[40.67\(l\)](#) and [40.69\(g\)](#));
  - (5) Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure
  - (6) Fail or decline to take an additional drug test the employer or collector has directed you to take (see, for instance, [§40.197\(b\)](#));
  - (7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under §40.193(d). In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test; or
  - (8) Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector).
  - (9) For an observed collection, fail to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.
  - (10) Possess or wear a prosthetic or other device that could be used to interfere with the collection process.
  - (11) Admit to the collector or MRO that you adulterated or substituted the specimen.
- (b) As an employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.



## TEAMSTERS SAFETY AND HEALTH

### Clearinghouse - Reporting

- Employers, consortia/third party administrators (C/TPAs), and/ or medical review officers (MROs) will be required to report drug and alcohol testing program violations to the Clearinghouse.
- SAPs will be required to report information about drivers undergoing the mandatory return-to-duty drug and/or alcohol rehabilitation process.
- Each time information is added to, modified or removed from the Clearinghouse, FMCSA will notify the affected driver.
- To receive electronic notification, drivers will have to register with the Clearinghouse

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How will drivers be notified when information about them is added to the Clearinghouse?

The Clearinghouse will notify a driver by mail using the address on his or her CDL anytime information about the driver is added, revised, or removed. A driver may elect to receive electronic notifications when registering in the Clearinghouse.



## TEAMSTERS SAFETY AND HEALTH

### Clearinghouse - Querying

- **Employers will be required to query the Clearinghouse for covered drivers for two purposes:**
  - Pre-employment screening
  - Annual verification
- **Pre-employment**
  - Purpose: to ensure that the prospective employee is eligible to drive.
  - Query-type: full queries would be conducted which means that FMCSA must verify specific driver consent prior to releasing information.
- **Annual Queries**
  - Purpose: to ensure that a driver did not violate the drug and alcohol program with another employer.
  - Query-type: limited queries to determine whether any data exists for a driver would be allowed and will only require general driver consent, subject to FMCSA audit.

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A limited query only identifies whether information about the driver exists in the Clearinghouse and will not result in release of any driver information.

If the limited query shows a driver record in the Clearinghouse, the employer would be required to run a full query, triggering FMCSA verification of specific driver consent before releasing information.

Drivers refusing consent will not be able to perform safety sensitive functions such as driving a commercial motor vehicle.

Information regarding the driver will be accessible to employers for a minimum of 5 years. If the driver does not satisfy the mandatory return to duty requirements, the information will remain accessible to employers indefinitely.





## TEAMSTERS SAFETY AND HEALTH

### Clearinghouse – Querying (Access)

- State driver licensing agencies will also be required to query the Clearinghouse when a State-licensed driver obtains, renews, upgrades, or transfers his or her CDL.
- The National Transportation Safety Board (NTSB) will be able to access Clearinghouse information for drivers involved in a crash under investigation by the NTSB.

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Prior to getting your CDL renewed, the DMV will ping the database to determine if you have positive tests



## TEAMSTERS SAFETY AND HEALTH

### Clearinghouse - Fees

- There will be no fees for a driver to access their own record in the Clearinghouse.
- Motor Carriers will pay a fee to query the Clearinghouse. The fee amount has not yet been determined, but will include options for subscription and batch use.



## TEAMSTERS SAFETY AND HEALTH

### Drug and Alcohol Clearinghouse

- To ensure the privacy of drivers involved, each CDL holder would need to provide his or her consent, before an employer could access the clearinghouse.
- Drivers will also have access to their respective information to ensure that all information therein is accurate. Registration is required.
- The Agency will retain data for 5 years.

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FMCSA takes the protection of personal information very seriously. The Clearinghouse will meet Federal Security Standards and FMCSA will verify the effectiveness of the security protections on a regular basis. Only full queries, which require verified driver consent, will result in the release of records to prospective or current employers (§ 382.703).

How long will driver violation records be available in the Clearinghouse?

Driver violation records will be available in the Clearinghouse to authorized employers for 5 years from the date of the violation determination, or until the driver completes the return-to-duty process, whichever is later. There are limited exceptions which could result in earlier removal of driver violations from the Clearinghouse, as described in 382.719(c).



## TEAMSTERS SAFETY AND HEALTH

### Frequently Asked Questions

#### May employers report the results of non-DOT drug or alcohol tests to the Clearinghouse?

- No. Only results of DOT drug or alcohol tests or refusals may be reported to the Clearinghouse. While employers may conduct drug and alcohol testing that is outside the scope of the DOT testing requirements, positive test results or refusals for such non-DOT testing *may not be reported* to the Clearinghouse.



## TEAMSTERS SAFETY AND HEALTH

### Frequently Asked Questions

**Will a driver's follow-up testing plan, implemented as part of the return-to duty process, be available in the Clearinghouse?**

- Follow-up testing plans will not be included in a driver's Clearinghouse record. When a prospective employee has not completed a follow-up testing plan prescribed by the Substance Abuse Professional, or SAP, the subsequent new employers must continue to obtain the follow-up testing plan from the previous employer, as required in [§ 382.413](#), and complete the follow-up testing.

**What are a medical review officer's (MRO) responsibilities for reporting information to the Clearinghouse?**

- Within two business days of making a determination or verification of a DOT-approved drug test, a MRO must report the following driver information to the Clearinghouse:
- Verified positive drug test results; or
- Refusal-to-test determinations based on the employee's inability to provide a sufficient specimen for testing, or the adulteration or substitution of a specimen.



## TEAMSTERS SAFETY AND HEALTH

### Frequently Asked Questions

#### What information is a substance abuse professional (SAP) required to report to the Clearinghouse?

- For each driver who has completed the return-to-duty process in accordance with [49 CFR part 40](#), the SAP must report the following information:
- SAP's contact information;
- Driver's name, date of birth, CDL number and State of issuance;
- Date of initial substance abuse professional assessment; and
- Date the SAP determined the driver demonstrated successful compliance with return-to-duty requirement and was eligible for return-to-duty testing.



# TEAMSTERS SAFETY AND HEALTH

**Revisions to the DOT Drug  
Testing Regulation**

**Expanding the Testing  
Panel – Opioids**

**Fatal Flaws in Testing**



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## TEAMSTERS SAFETY AND HEALTH

### Drug Testing Panel

Effective January 1, 2018, the drug testing panel will be:

- Marijuana
- Cocaine
- Amphetamines
- Phencyclidine
- Opiates
- **Opioids (New)**
  - **Hydrocodone** - Vicodin, Lortab, Lorcet, Maxidone, Norco, Zydone, Vicoprofen, Ibudone, Reprexain
  - **Hydromorphone** - Dilaudid
  - **Oxymorphone** - Numorphan
  - **Oxycodone** - OxyFast, OxyIR, OxyNorm, Roxicodone, OxyContin, Percocet

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**Opiate- natural morphine- heroine**

**Opioid-synthetic -pain**

**Hydrocodone** is available in a variety of formulations for oral administration:

(, Alor 5/500, Azdone, Damason-P, Lortab ASA, Panasal 5/500), Hysingla ER, and Zohydro ER

**Hydromorphone** is also known

**Oxymorphone** is also known as

**Oxycodone** is also known as, Endocet, Roxicet, Tylox,

Endodan, Oxycodan, Percodan, Roxiprin, Combunox, Targin, Targiniq, Targinact, and Troxyca





## TEAMSTERS SAFETY AND HEALTH

### Medical Review Officer Determination

- If a test result is positive, the MRO will contact the driver to determine if there is a valid explanation for the test result. If the driver has a valid prescription, the MRO will downgrade the test result to negative.
- If the MRO determines that the driver's use of the drug presents a "safety risk", the MRO is obligated to contact the driver's employer.
- Prior to notifying the employer, the MRO will allow the driver five days to have his/her prescribing physician contact the MRO to discuss alternative options, etc.
- If the that discussion is satisfactory, the MRO will not notify the employer of a safety concern.



## TEAMSTERS SAFETY AND HEALTH

### Fatal Flaws in Testing

**The FMCSA added three fatal flaws to its existing list of four fatal flaws.**

- If the specimen ID numbers on the specimen bottle and the Chain of Custody Form (CCF) do not match
- The specimen bottle seal is broken or shows evidence of tampering, unless a split specimen can be redesignated
- The collector's printed name and signature are omitted from the CCF
- There is an insufficient amount of urine in the primary bottle, unless the specimens can be redesignated
- There is no CCF
- Two separate specimens were collected using one CCF
- There was no specimen submitted to the laboratory with the CCF



## TEAMSTERS SAFETY AND HEALTH

Electronic Logging Devices for Hours of Service Compliance

### Final Rule

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This rulemaking has been in process for many years. The Federal Motor Carrier Safety Administration (FMCSA) issued a Final Rule a few years ago, but withdrew the Rule when OOIDA filed a lawsuit due to concerns about:

- The devices being used to harass drivers by:
  - Contacting them when they are resting
  - Pressure them to drive faster, or
  - Continue driving when professional judgment of the driver indicated that it was appropriate to park.

The agency discussed ELDs with the Motor Carrier Safety Advisory Committee (MCSAC) which is comprised of stakeholders from labor, industry, safety advocates, the public, and law enforcement. The MCSAC advised the agency to limit rulemaking to only tracking HOS compliance. The Agency subsequently published a Proposed Rule that focused on HOS compliance and a Final Rule that does likewise.



### Electronic Logging Devices

#### What is an ELD?

- A device that automatically records a driver's driving time and other aspects of the HOS records.
- Monitors a vehicle's engine to capture data on whether the engine is running, miles driven, and engine hours.

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It should be noted that the ELD does not capture HOS of data when the driver is not operating the commercial motor vehicle. The driver will have to manually enter data into the device.

#### ***Who must use an electronic logging device (ELD)?***

The ELD rule applies to motor carriers and drivers who are currently required to keep records of duty service (RODS) on paper or with an Automatic Onboard Recording Device (AOBRD) under the hours-of-service (HOS) regulations.

Drivers who use the timecard exception, and don't keep paper RODs, will not be required to use ELDs.

#### ***The following drivers may keep paper RODs:***

Drivers who keep RODs no more than 8 days during any 30-day period.

Driveaway-towaway drivers (transporting a vehicle for sale, lease, or repair), provided the vehicle driven is part of the shipment.

Drivers of vehicles manufactured before model year 2000.

However, a carrier can choose to use an ELD, even if it is not required.



## TEAMSTERS SAFETY AND HEALTH

### Electronic Logging Devices

#### Implementation Dates

- Carriers and drivers who are using paper logs or logging software must transition to ELDs no later than December 18, 2017.
- Carriers and drivers who use AOBRDS prior to the compliance date must transition to ELDs no later than December 16, 2019.



## TEAMSTERS SAFETY AND HEALTH

### Electronic Logging Devices

#### What does the Electronic Logging Device (ELD) rule address?

- Requires ELD use by commercial drivers who are required to prepare hours-of-service (HOS) records of duty status (RODS).
- Sets ELD performance and design standards, and requires ELDs to be certified and registered with FMCSA.
- Establishes what supporting documents drivers and carriers are required to keep.
- Prohibits harassment of drivers based on ELD data or connected technology (such as fleet management system). The rule also provides recourse for drivers who believe they have been harassed.

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ELD manufacturers must certify that the devices meet the technical standards in the ELD rule.

Certified ELDS will be registered and listed on a FMCSA website similarly to what is currently done for drug testing laboratories that analyze specimens in the DOT drug testing program and for medical examiners who provide physical examinations for commercial drivers.



### Electronic Logging Devices

**Is an electronic logging device (ELD) required to collect data about vehicle performance?**

- No, ELDs are not required to collect data on vehicle speed, braking action, steering function, or other vehicle performance parameters. ELDs are only required to collect data to determine compliance with HOS regulations.

**Do the specifications in the ELD rule include requirements to automatically control the vehicle, such as other safety systems that may automatically reduce acceleration or apply braking?**

- No, the rule does not include requirements to control the vehicle or any other safety systems.

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There has been quite a bit of confusion about ELD's versus fleet management systems. Many fleet management systems have ELD capabilities, but ELDs are not required to have fleet management system features.



### Electronic Logging Devices

#### Does the Electronic Logging Device (ELD) rule require real-time tracking of commercial motor vehicle (CMVs) with ELDs?

- No, real-time tracking of CMVs is not required in the ELD rule. Vehicle location is only recorded at certain intervals with limited accuracy.
  - A motor carrier may use technology to track its CMVs in real-time for business purposes.
  - A motor carrier is free to use this data as long as it does not engage in harassment or violate the Federal Motor Carrier Safety Regulations (FMCSRs).
  - When the ELD is used to transmit data to safety officials, ELDs must limit location information to protect driver privacy.





## TEAMSTERS SAFETY AND HEALTH

### Electronic Logging Devices

#### Who must use an electronic logging device (ELD)?

- The ELD rule applies to motor carriers and drivers who are currently required to keep records of duty service (RODS) on paper or with an Automatic Onboard Recording Device (AOBRD) under the hours-of-service (HOS) regulations.
- Drivers who use the timecard exception, and don't keep paper RODs, will not be required to use ELDs.

#### The following drivers may keep paper RODS:

- Drivers who keep RODS no more than 8 days during any 30-day period.
- Driveaway-towaway drivers (transporting a vehicle for sale, lease, or repair), provided the vehicle driven is part of the shipment.
- Drivers of vehicles manufactured before model year 2000.
- However, a carrier can choose to use an ELD, even if it is not required.



### Electronic Logging Devices

#### What electronic logging device (ELD) user documentation must be onboard a driver's commercial motor vehicle?

- A user's manual for operating the ELD;
- An instruction sheet with step-by-steps instructions for transferring hours-of-service records to an authorized safety official;
- An instruction sheet on reporting ELD malfunctions and recordkeeping procedures during ELD malfunctions; and
- A supply of paper grid graphs to record driver duty status and related information for at least 8 days, in case of ELD malfunction.



## TEAMSTERS SAFETY AND HEALTH

### Electronic Logging Devices

#### What are the categories of supporting documents?

#### FMCSA has identified five categories of supporting documents:

- Bills of lading, itineraries, schedules, or equivalent documents that show the starting and ending location for each trip;
- Dispatch records, trip records, or equivalent documents;
- Expense receipts related to “on-duty/not driving” periods (meals, lodging, fuel, etc.);
- Fleet management system communication records;
- Payroll records, settlement sheets, or equivalent documents showing payment to a driver.



## TEAMSTERS SAFETY AND HEALTH

### Electronic Logging Devices

#### What supporting documents must be retained by drivers in their vehicles?

- A driver is not required to retain any supporting documents in the vehicle. However, a driver must show any supporting documents that are in a vehicle to authorized safety officials on request.

#### Can supporting documents be limited to only those acquired at the beginning and end of the workday?

- No, it is important to keep documents received throughout the day to verify hours of service compliance with the 60/70-hour rule over a period of days.



## TEAMSTERS SAFETY AND HEALTH

### Electronic Logging Devices

#### What is the definition of harassment in the Electronic Logging Device (ELD) rule?

- Harassment is action taken by a motor carrier that the carrier knew (or should have known) would result in a driver violating the Hours of Service (HOS) rules or a situation where the driver is operating while ill or fatigued. The carrier's action must be based on information from an ELD or other technology used in combination with an ELD.



## TEAMSTERS SAFETY AND HEALTH

### Electronic Logging Devices

#### What are the differences between harassment and coercion?

- Harassment is very specific; harassment occurs when a driver commits an HOS violation based on carrier actions that were related to ELD use.
- Coercion is much broader, and is not limited to HOS violations. Coercion occurs when a motor carrier, shipper, receiver, or transportation intermediary threatens to withhold work from, take employment action against, or punish a driver for refusing to operate in violation of certain provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), Hazardous Materials Regulations (HMRs) and the Federal Motor Carrier Commercial Regulations (FMCCRs). Coercion may be found to have taken place even if a violation has not occurred. FMCSA has published a separate rule on coercion.



## TEAMSTERS SAFETY AND HEALTH

### Medical Qualifications

- Sleep Apnea
- Seizure Disorders
- Vision
- Diabetes

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## TEAMSTERS SAFETY AND HEALTH

### Sleep Apnea

- Sleep apnea is a potentially serious sleep disorder in which breathing repeatedly stops and starts.





## TEAMSTERS SAFETY AND HEALTH

### Sleep Apnea

#### Height/Weight

- 5 feet, 4 inches/204 lbs
- 5 feet, 5 inches/211 lbs
- 5 feet, 6 inches/217 lbs
- 5 feet, 7 inches/224 lbs
- 5 feet, 8 inches/230 lbs
- 5 feet, 9 inches/237 lbs
- 5 feet, 10 inches/244 lbs
- 5 feet, 11 inches/251 lbs
- 6 feet, 0 inches/258 lbs
- 6 feet, 1 inch/265 lbs
- 6 feet, 2 inches/273 lbs
- 6 feet, 3 inches/280 lbs
- 6 feet, 4 inches/288 lbs
- 6 feet, 5 inches/295 lbs

#### Body Mass Index

- 35.0
- 35.0
- 35.0
- 35.0
- 35.0
- 35.0
- 35.0
- 35.0
- 35.0
- 35.0
- 35.0
- 35.0
- 35.0
- 35.0



### Sleep Apnea

#### Sleep Apnea

- Studies show that drivers who have OSA are over 2 times as likely to have a crash than drivers who don't have the disorder
- Research indicates that there is a high correlation between Body Mass Index (BMI) and OSA, so BMI is a good indicator of OSA
- Studies show that there is a high correlation between a diagnosis of OSA and excessive daytime sleepiness

Manila Group did a meta-analysis of pooled data from other studies and determined that drivers who have OSA are over 2 times as likely to have a crash when compared to drivers who don't have OSA. It should be noted that the pooled data includes that from commercial drivers and from non-commercial drivers.



## TEAMSTERS SAFETY AND HEALTH

### Sleep Apnea

- MRB recommended revising regulatory guidance for medical examiners
- MRB met with MCSAC to discuss proposed revisions
- Congress instructed FMCSA to refrain from issuing guidance and to conduct rulemaking on this issue.
  - Because there is no guidance, medical providers are determining what is the best practice for their individual operation.
  - Not likely that FMCSA will conduct rulemaking in the foreseeable future.

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The Medical Review Board reviewed the latest scientific and medical research concerning OSA and determined that there is a need to update the guidance to medical examiners MRB met with the Motor Carrier Safety Advisory Committee to discuss the proposed revisions and to get input from MCSAC members regarding how the revisions will impact on drivers and the trucking industry.

The Congress instructed FMCSA to conduct rulemaking. The result is that there is no guidance provided to medical providers and each provider is determining what is appropriate for his/her practice. Consequently, many of our members are having to submit to sleep studies for simply having one or two risk factors.



## TEAMSTERS SAFETY AND HEALTH

### Sleep Apnea

- Sleep Apnea Recommendations
  - Driver will be disqualified immediately if the driver
    - Admits to experiencing excessive sleepiness during the major wake period while driving
    - Experienced a crash associated with falling asleep, or
    - Has been found non-compliant with treatment

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If a driver has a history of sleepiness during their normal awake period or if they have had a fatigue related crash, the driver will be taken out of service. The driver will not be allowed to operate a CMV until he/she submits to a sleep study and demonstrates compliance with any required treatment.

If a driver has been diagnosed with sleep apnea, but refuses to comply with treatment, he/she will be removed from service.

Compliant treatment is defined as using the PAP treatment for at least 4 hours per day for at least 70% of the days in a week.



### Sleep Apnea

#### Sleep Apnea Screening (Risk Factors)

- BMI equal to or greater than 35
- Reported loud snoring
- Witnessed apneas
- Reported sleepiness during the major wake period
- Small or recessed jaw
- Small airway (Mallampti Scale of Class 3 or 4)
- Neck size (17 inches for men, 15.5 inches for women)
- Hypertension (treated or untreated)
- Type 2 diabetes
- Age 42 or above
- Family history
- Experienced a single-vehicle crash

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It is important to note that if you have a BMI of 35 or higher, many medical examiners will require drivers to be evaluated for sleep disorders prior to issuing a medical certificate. The remaining risk factors as listed above will be considered individually or collectively when determining whether a driver should be evaluated for sleep disorders.



### Sleep Apnea

#### Sleep Apnea (Diagnostic Process)

- In-lab polysomnography
- At-home polysomnography
  - Is not as comprehensive as in-lab test
  - If negative, driver will have to submit to in-lab test

#### Treatment Options

- CPAP
- Bariatric Surgery
- Tracheotomy
- Weight Loss – Non-surgical
- Dental Appliances – Not currently acceptable as effective treatment for moderate to severe OSA

For the at-home test, if the result is negative, the driver will likely have to submit to an in-lab test. Testing is fairly expensive.



# TEAMSTERS SAFETY AND HEALTH

## Seizure Disorders

Exemption Program

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## TEAMSTERS SAFETY AND HEALTH

### Seizure Disorders

- There is no formal exemption program, unlike those for vision and diabetes.
- FMCSA does allow drivers who have medically controlled seizure disorders to apply for and receive an exemption which allows them to operate commercial motor vehicles.

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It is anticipated that due to significant medical advances in the treatment of seizure disorders, the FMCSA will propose to modify the medical qualification regulations to permit drivers who have seizure disorders to operate CMVs.





## TEAMSTERS SAFETY AND HEALTH

### Diabetes and Vision

- FMCSA will soon commence rulemaking to allow drivers who have insulin-treated diabetes to medically qualify without having to go through an exemption process
- The Agency will do the same regarding vision qualifications



## **TEAMSTERS SAFETY AND HEALTH**

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