



IBT  
Safety and Health Department  
Regulatory Update  
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Thank you for the opportunity to meet with you to discuss changes to the transportation safety regulations that affect our driver membership. During today's presentation, I will cover several subjects that should be of interest to you. Feel free to ask questions as we have plenty of time to cover this information.

## Safety and Health Issues

- Drug and Alcohol Testing Clearinghouse
- Revisions to Drug Testing Regulation
- Electronic Logging Devices - Commercial Vehicles
- Medical Qualifications
  - Sleep Apnea
  - Seizure Disorders

I will discuss with you, the topics as detailed on this slide. There are significant regulatory changes that have been or will be soon implemented in the trucking and bus industries. These revisions and new regulations will affect commercial drivers in all sectors of the truck and bus industries.



# Drug and Alcohol Testing Clearinghouse

# Drug and Alcohol Clearinghouse

- Overview of the Clearinghouse Rule
- The Drug & Alcohol Clearinghouse will be a database containing CDL drivers' drug and alcohol program violations.
- It will also contain information about whether a driver has successfully completed the mandatory return-to-duty drug and/or alcohol rehabilitation process.
- Clearinghouse requirements fall into two major categories:
  - Reporting and
  - Querying

## Drug and Alcohol Clearinghouse

- The Federal Motor Carrier Safety Administration conducted rulemaking and issued a Final Rule rule to establish a clearinghouse will require the following:
  - Create such a repository 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.

- ***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.

## 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.

- ***FMCSA proposes to add a new section that would provide that an employer must not allow a driver to operate a CMV if the Clearinghouse has a record that shows that a driver has not successfully completed the return-to-duty process required by 49 CFR 40.305.***
  - We support the proposed requirement as it codifies for all motor carriers a provision that our unionized carriers implemented many years ago. However, because this provision ultimately affects a driver's ability to resume his/her driving tasks after a positive test result, it is vitally important that the data collected is accurate and current, and that there be an expedient data transmission process in place.

## 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.
- The Agency will retain data for 5 years.
- The Effective Date for this regulation is January 6, 2020.
- Data collected will be comprised of those collected from the Effective date moving forward...no lookback

## 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



## 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.

## Clearinghouse – Querying (Continued)

- 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.

## Clearinghouse – Querying (Continued)

- 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.

## 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.

## Frequently Asked Questions

- Will violations that occur before the Clearinghouse rule is implemented be included in the Clearinghouse?
  - No. The Clearinghouse will contain only violations that occurred on or after the rule's implementation date of January 6, 2020.
- How will FMCSA protect a driver's personal information?
  - 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).

## Frequently Asked Questions

- May drivers access their own information in the Clearinghouse?
  - Yes. Drivers will be able to electronically access their Clearinghouse records or determine the status of information in their record at no cost. Drivers will need to register in the Clearinghouse in order to access their information.
- 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.

## Frequently Asked Questions

- 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).
- Are Canadian and Mexican drivers conducting operations in the United States subject to the Clearinghouse requirements?
  - Yes, all Mexican or Canadian employers, employees or service agents currently required to comply with DOT and FMCSA drug and alcohol testing requirements must comply with the Clearinghouse final rule.

## 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.



# 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 employer 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.

## 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.



# Revisions to the DOT Drug Testing Regulation

Expanding the Testing Panel – Opioids  
Fatal Flaws in Testing

# Drug Testing Panel

- Effective January 1, 2018, the drug testing panel is now:
- Marijuana
- Cocaine
- Amphetamines
- Phencyclidine
- **Opioids (New)**
  - **Hydrocodone** - Vicodin, Lortab, Lorcet, Maxidone, Norco, Zydone, Vicoprofen, Ibudone, Reprexain
  - **Hydromorphone** - Dilaudid
  - **Oxymorphone** - Numorphan
  - **Oxycodone** - OxyFast, OxyIR, OxyNorm, Roxicodone, OxyContin, Percocet
  - Codeine,
  - Morphine
  - Heroin

**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

## 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.

## Fatal Flaws in Testing

- The FMCSA expanded the list of fatal flaws to the following:
  - 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



# Electronic Logging Devices for Hours of Service Compliance

## Final Rule

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.

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.



# 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.

# 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.

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.

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.

# 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.

# 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.

## 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.



## 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.

# 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.



# Medical Qualifications

Sleep Apnea  
Seizure Disorders



## Sleep Apnea

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

# 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
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  - 35.0
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  - 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.

# Sleep Apnea

- MRB recommended revising regulatory guidance for medical examiners
- MRB met with MCSAC to discuss proposed revisions
- The 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.

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.

# 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

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

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.



# Seizure Disorders

Exemption Program

## 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.

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.

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