

BEST PRACTICES IN MANAGING YOUR DRUG & ALCOHOL TESTING PROGRAM

PRESENTED BY:

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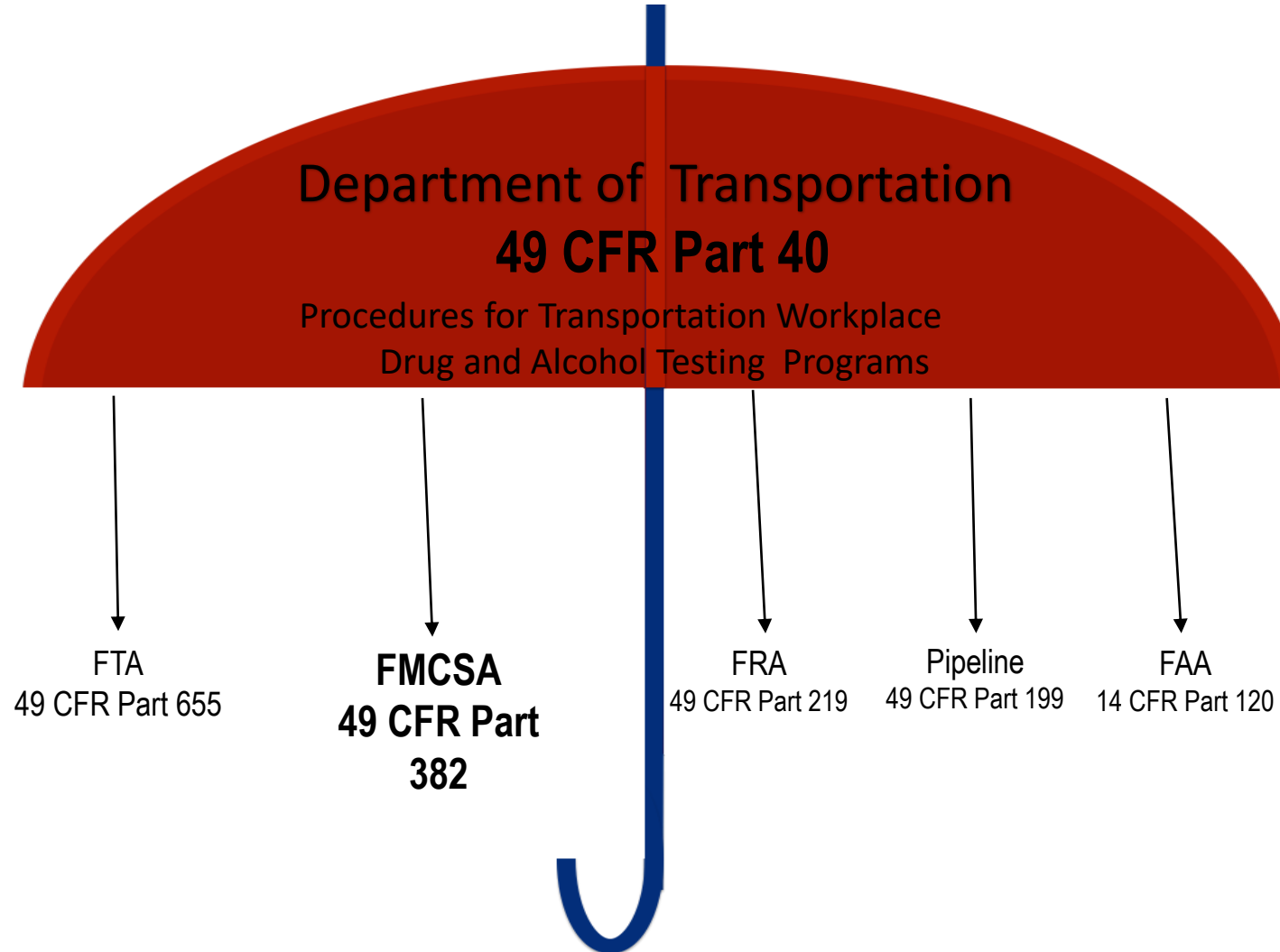
FLEET SCREEN

SEPTEMBER 21, 2018

OVERVIEW OF REGULATORY CHANGES

- 1988 DRUG FREE WORKPLACE ACT
- 1994 OMNIBUS TRANSPORTATION TESTING ACT (OTETA)
- 2000 PART 40 GUIDELINES
- 2010 ADDITION OF MDMA (ECSTACY) LOWERING COCAINE & AMPHETAMINE TESTING LEVELS
- 2018 NEW CCF FORM, ADDITION OF SEMI SYNTHETIC OPIOIDS TO THE TESTING PANEL.

Federal Regulations That Apply To You



Summary of Changes

- Drug Testing Panel Modifications
 - “Opiate” changes to “Opioid”
 - Four new opioids added to testing panel

Chemical Name	Common Brand Names
Hydrocodone	Norco [®] ; Vicodin [®] ; Lortab [®]
Hydromorphone	Dilaudid [®] ; Exalgo [®]
Oxycodone	Oxycontin [®] ; Roxicodone [®] ; Percocet [®]
Oxymorphone	Opana [®]

Summary of Changes

- Drug Testing Panel Modifications (continued)
 - “MDA” added to screening test
 - “MDEA” removed
- Revisions / Updates to Terms & Definitions
 - ***“DOT, the Department, DOT agency”***
 - Modified to encompass all DOT agencies, (FAA, FRA, FMCSA, FTA, PHMSA, NHTSA, OST, and any designee of a DOT agency)
 - Clarified USCG’s relationship with USDOT

Summary of Changes

- Revisions / Updates to Definitions (continued)
 - ***“Drugs”*** – modified to match the additions and revisions as discussed earlier
 - ***“Alcohol Screening Device” & “Evidential Breath Testing Device (EBT)”***
 - List of approved devices now listed on ODAPC’s website (instead of in the federal register)
 - ***“Substance Abuse Professional”***
 - List of qualified agencies for drug and alcohol counselor licenses/certificates will now be listed on ODAPC’s website

Summary of Changes

- ODAPC List-Serve
 - All service agents REQUIRED to “subscribe”
 - Sign-up via <https://www.transportation.gov/odapc/get-odapc-email-updates>
- Prohibition of Use of Federal Branding, etc.
- Blind Specimen Testing No Longer Required

Summary of Changes

- Urine Collection / Testing
 - Urine only allowable specimen (no blood, hair, sweat, etc.)
 - No DNA testing allowed
 - 3 new “Fatal Flaws”
 - No CCF with urine specimen at Lab
 - No urine specimen with CCF at Lab
 - Only if a specimen was actually collected
 - Two separate collections on only one CCF

Summary of Changes

- Urine Collection / Testing (continued)
 - Insufficient “Questionable Specimens” - Always discard & remark
- New CCF Changes
 - Removed “DOT” box in Step 1D
 - Revised list of drugs in Step 5A

Summary of Changes

- Urine Collection / Testing (continued)
 - Use of “old” / “new” CCF
 - “New” CCF authorized for use Jan 1, 2018
 - Continued use of old CCF authorized through June 30, 2018
 - No ‘memorandum for the record required’ through June 30, 2018 for use of “old” CCF
 - “New” CCF **MUST BE** utilized July 1, 2018

Summary of Changes

- MRO Verification Process
 - Clarification of the term “*prescription*”
 - Prescription (Rx) must be consistent with Controlled Substances Act (CSA)
 - MRO-ordered additional testing
 - Authorized without prior ODAPC consent
 - Meth false positives due to Rx/OTC meds
 - Illicit THC vs. Marinol

Summary of Changes

- MRO Rx Verification Process
 - MRO release of information – Medically unqualified / Significant safety risk
 - Step 1 – Verify test result
 - Step 2 - Initial MRO determination
 - MRO notifies employee of medically unqualified / significant safety risk
 - Step 3 - Five-days for prescribing physician to contact MRO
 - Employee facilitates contact

What drugs are in the DOT panel? Which ones are new?

Regulated 5-Panel

- Marijuana
- Cocaine
- Opioids
(codeine/morphine/6AM/hydrocodone/hydromorphone/oxycodone/oxymorphone)
- Amphetamines
(methamphetamine/MDMA/MDA)
- PCP

New Drugs

- Hydrocodone
- Hydromorphone
- Oxycodone
- Oxymorphone

Semi-Synthetic Drugs – Added to the DOT Panel effective Jan 1, 2018

Why was it important for the opioids to be added to the panel?

October of 2017 the Federal Government declared a National Opioid Crisis. Over 100 Americans die every day from opioid overdose. The misuse of and addiction to opioids is a crisis that affects overall public health as well as our social and economic welfare.

- **Roughly 20 percent of patients prescribed opioids for chronic pain misuse them**
- **Roughly 10 percent develop an opioid use disorder**
- **Roughly 5 percent of those patients who develop a disorder transition to heroin use**
- **The Midwest Region saw opioid overdoses increase 70 percent from 2016-2017**

- <https://www.ispot.tv/ad/douu/truth-amys-story-opioids?autoplay=1>

Current Issues

- Dramatic increase in use of controlled substance medications to treat chronic pain, anxiety, depression, attention deficit disorders, in US population
- Hundreds of new drugs on the market every year that have potential “impairing” effects
- Medication interactions are often unknown and not monitored because people get multiple medications from several physicians
- Aging population being prescribed more and more drugs
- Painkillers, tranquilizers, sleep aides readily available via the internet and “walk-in” clinics

Introduction to Opioids



What are Opioids?

- Opioids: a type of pain medicine that is man made (oxycodone, Percocet)



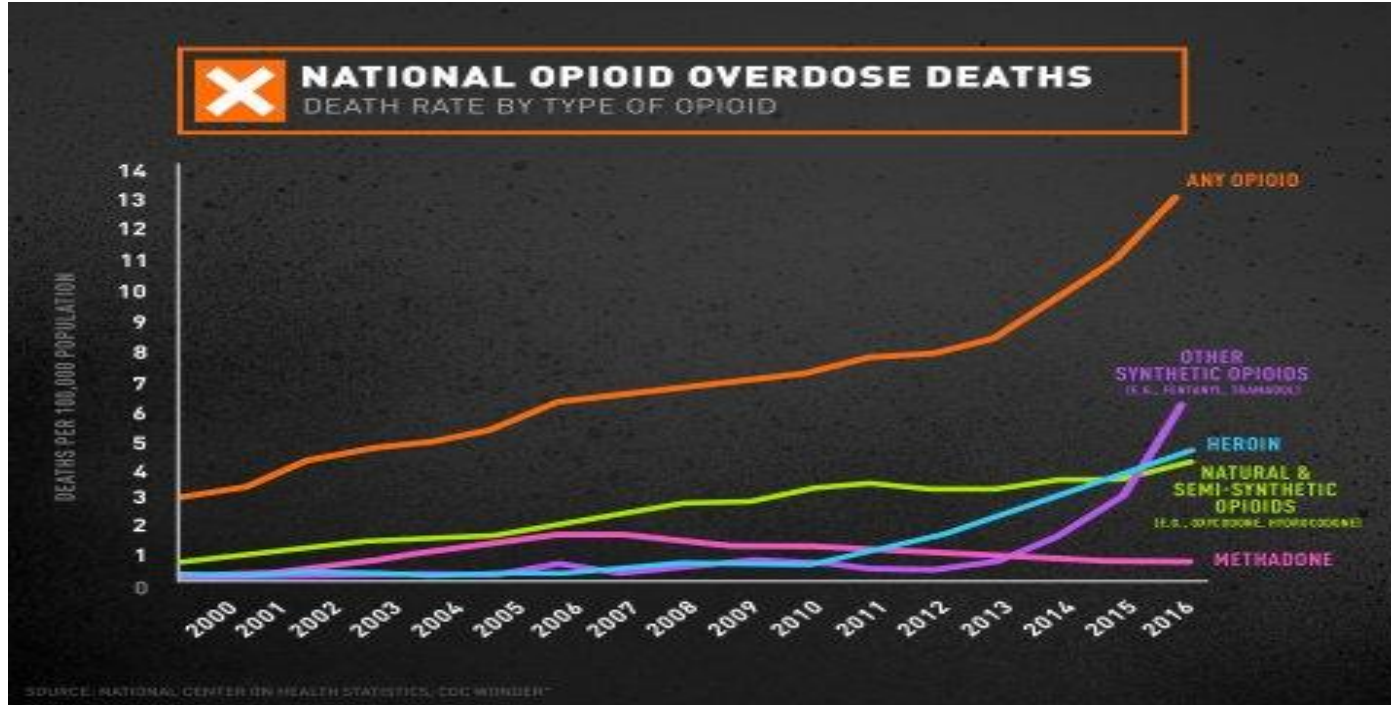
- Opiates: a type of pain medicine that is naturally occurring (morphine, heroin)



Examples of Synthetic Opioids

Generic Name	Brand Name
Codeine	(only available in generic form)
Fentanyl	Actiq, Duragesic
Hydrocodone	Zohydro
Hydrocodone/Tylenol	Lorcet, Vicodin, Lortab
Hydromorphone	Dilaudid
Methadone	Dolophine
Oxycodone	OxyContin

OPIOID OVERDOSE DEATHS



In 2016, more than 42,249 people died of opioid overdoses in America--more than 115 people every day. And that's 115 too many.

All of this coincides with the change of the DOT drug panel

If a driver uses a drug identified in 21 CFR 1308.11 (391.42) or any other substance such as amphetamines, a narcotic, or any other habit forming drug. The driver may be medically unqualified. There are exceptions in that the driver must communicate use of those drugs to the DER's prior to driving and also disclose that information to the DOT Certified Physician during physicals.

If a driver seeks treatment after having a DOT physical they should be given a Commercial Motor Vehicle Driver Prescription Use Form. This form allows the prescribing doctor to be aware the patient has a safety sensitive job function and any prescriptions given to the patient would not in any way adversely affect the ability to operate a CMV safely.

Now does this happen? Most cases NO!

Most DER's are unaware they have drivers who are operating while taking narcotics or habit forming drugs.

- **Opioid medicine bottles have warning labels such as, "MAY CAUSE DROWSINESS", "USE CAUTION WHEN OPERATING A CAR OR DANGEROUS MACHINERY"**



Legal vs. Illegal Drugs

- NTSB, ONDCP, SAMHSA and other government agency studies indicate that abuse and misuse of prescription controlled substance medications is more prevalent than “illicit” drug use.
- Dramatic increase in past decade in use of medications for chronic pain, anxiety, sleep disorders, & attention deficit disorders.
- Abuse and misuse of prescribed meds takes several forms:
 - Use for longer than medically indicated
 - Use in dosages higher than recommended
 - Use in combination with other drugs & OTC meds
 - Use when performing tasks that are contraindicated

DOT Guidance on Use of Prescribed Medications & Over-the-counter (OTC) Drugs by Safety-sensitive Employees

- Prescription medicine and OTC drugs may be allowed; however, you must meet the following minimum standards:
 - The medicine is prescribed to you by a licensed physician, such as your personal doctor.
 - The treating/prescribing physician has made a good faith judgment that the use of the substance at the prescribed or authorized dosage level is consistent with the safe performance of your duties.
 - The substance is used at the dosage prescribed or authorized.
 - If you are being treated by more than one physician, you must show that at least one of the treating doctors has been informed of all prescribed and authorized medications and has determined that the use of the medications is consistent with the safe performance of your duties.
- Your employer may have specific requirements concerning the reporting or notification of your use of prescription or over the counter medications

Workplace Impact

- “Medically Unqualified / Significant Safety Risk”
 - Final word is the MRO’s DISCRETION
- What are the REAL implications?
 - Access to prescribing physician
 - Expiration of Rx
 - No recent contact to prescribing physician
- What to do when/if you get the phone call
 - This is 100% employer’s determination (No USDOT regulation)
 - Unless USDOT - CDL medical standards apply

Workplace Impact

- Policy Revisions – BEST PRACTICES (NOT REQUIRED BY USDOT)
 1. If your policy currently has a section on Rx/OTC medication use
 - Update to address MRO determinations of “Medically Unqualified / Significant Safety Risk”
 2. If your policy DOES NOT have a Rx/OTC medication use section
 - Consider adding a short paragraph

“5-Day Pause”

Why does the MRO institute the “5-day pause”?

ANSWER: If the donor has a valid prescription for a medication which produces a negative result but that medication may impair the donor’s ability to operate in a safety-sensitive function. The **NEW** requirement allows the donor 5-business days to have the prescribing physician contact to the MRO to discuss dosage and other possible medications that would not affect the donor’s safety-sensitive functions.

What happens if the donor doesn’t follow the instructions from the MRO in regards to the “5-day pause”?

ANSWER: Negative Result is resubmitted to the DER with a safety concern

Negative with Safety Concern

**What is a negative with safety concern:
Simply means the MRO has determined 2 things to be true;**

1. A non-negative drug test was in fact due to a legitimate medical explanation – the donor was taking a valid prescription which resulted in the specimen to be reported to the DER as a negative result.
2. Even though the prescription may be valid, that donor is taking a medication that may impair the donor's ability to operate in a safety-sensitive function.

What does a DER do with a negative result for a donor but has now received a **negative with safety concern** result for the donor?

- Speak with the donor, ask them why they did not follow the instructions given by the MRO. Some may just clearly not understand.
- Give the donor a CMV Prescription Use Form 391.41 to supply to the prescribing physician.
- Check to see if the medication that is promoting the safety concern was listed on the donor's last physical.
 - If not, have the donor proceed for another physical with the medication disclosed to the certified DOT physician. The certified DOT Physician can determine if the donor is qualified or disqualified to drive.

The biggest thing to remember is that a negative with safety concern **CANNOT** be ignored!

- You must have documentation that the donor is able to drive while on the medication.
- Or you must have documentation that the donor's physician is changing the care plan to accommodate the donor's safety-sensitive function.
- Or you must have a DOT physical with the medication disclosed and that the donor is cleared to continue to operate in a safety-sensitive function.

MRO Notice to Donor

- MRO notifies donor that he/she can submit (within 5 days) documentation from prescribing physician that demonstrates:
 - Medication has been discontinued, or
 - changed to one that does not cause concern
- If MRO receives such documentation, employer will be notified that safety concern is removed

- **Safety Concerns from Medical Review Officer Review**

- The medical review officer is required by 49CFR Part 40.327 to provide to third parties, drug test results and medical information affecting the performance of safety-sensitive duties which are obtained during the verification process.
- Employee
- Social Security or ID
- Date of Specimen Collection
- Date of MRO determination
- As a result of the MRO verification process, the MRO has determined that in addition to the drug test result there is a:
- Safety Concern – Medication –Employee has reported the use of medication(s) that may pose significant safety risk or may make the employee medically unqualified for a safety-sensitive position.

In accordance with §40.135 (c) the employee has been notified that they have 5 days for the prescribing physician to contact the MRO to determine if the medication can be changed to one that does not make the employee medically unqualified or does not pose a significant safety risk. Employer will be notified if this information is provided. If you do not receive an amended report, additional information that the medication was discontinued or changed was not provided

Additional information obtained from the treating provider on __, that medication of concern has been discontinued or changed to one that does not present a safety concern

Additional information obtained from the treating provider on __, that medication of concern has been changed, but to one that also presents a safety concern

Safety Concern – Medical Condition – Employee has disclosed a medical condition that may have an adverse impact on the safe performance of safety-sensitive duties--Recommend evaluation by Occupational Health professional

Safety Concern – Medical Condition – Employee has disclosed a medical condition that may result in the employee not meeting Federal medical standards - Recommend evaluation by Occupational Health professional/Medical Examiner.

- **Medical Review Officer Name:** _____

- _____

- **Medical Review Officer Signature:** _____

- _____

- **Date:** _____

- _____

Implications

- Possible MRO Determinations
 - Silent—No safety risk, no employer knowledge, no employer action
 - Notification of safety issue—Employer action
 - Follow procedure for CDL standard violation if appropriate
 - Liability Considerations
 - Human Resource
 - Legal Considerations
 - Collective Bargaining



Employer Actions on MRO Safety Concern

- Options for resolving safety-concerns
 - Have prescribing physician provide statement that employee is able to perform safety-sensitive duties while taking medications
 - Have employee undergo “fitness for duty” evaluation by employer designated physician
- Important for employer to have medication policy and procedures in place
- MRO cannot make “fitness for duty” recommendation based on donor interview and urine drug test result

Best Practice

- Proactively Discuss Philosophy and Procedures with MRO
- If MRO Philosophy Is Inconsistent with Employer Philosophy or Intent of Regulation, Identify New MRO
- If MRO Is Unwilling or Unable to Perform This Function, Identify New MRO
- Define MRO Safety Issue Notification Procedures, Documentation and Timeline
- Negotiate Cost of MRO Safety Assessment

Implications

- Employee Facilitation of Prescribing Physician/MRO Contact
 - Employees May Have Difficulty Accessing the Prescribing Physician In a Timely Manner
 - If More Than 5 Days Are Needed To Obtain an Appointment or Otherwise Get In Contact
 - The Prescribing Physician Is Unaware or Does Not Understand the Importance of the Contact
 - Employee Has Had No Recent Contact or Ongoing Relationship with the Prescribing Physician
 - Employee Does Not Know How to Facilitate the Contact Between the Physician and the MRO

Best Practices

- Inform Applicants of Possible Prescribing Physician/MRO Contact Requirement
 - Provide Explicit Directions As Early on In the Hiring Process As Possible
 - Emphasize That a Valid Rx Does Not Necessarily Mean Disqualification.
 - Rx Is Only An Issue When It Rises to the Level of Safety Risk.

Employer Challenge

- Best Practice Is to Develop An Effective Rx Fitness-for-Duty Program
 - A program that minimizes the associated impairment risks of taking legally and illegally obtained prescription medications while performing trucking-related, safety-sensitive functions



Update Your DOT FMCSA Policy

- DOT employers should amend their DOT FMCSA Policy to give Drivers fair notice that the DOT Employer, under 49 CFR Part 391.11, has the final authority to make fitness for duty disqualification determinations for its FMCSA Drivers.



Workplace Impact

- Policy Revisions –
 1. Change “opiate” to “opioid”
 2. Remove (or edit) “breakdown” of 5-panel drug sub-categories
 3. Remove (or edit) drug cut-off levels
 4. Revise your “definitions” (if applicable)
 - ASD, EBT, SAP, DRUGS, USDOT

RANDOM TESTING BEST PRACTICES

- SELECTIONS MUST BE SPREAD REASONABLY THROUGH YEAR
- UPDATE YOUR DRIVER ROSTER PRIOR TO RANDOM SELECTIONS
- KEEP RANDOM SELECTION NOTICES CONFIDENTIAL
- DRIVERS MUST PROCEED **IMMEDIATELY** TO THE TESTING SITE ONCE NOTIFIED FOR RANDOM TESTING. NO 2 HOUR RULE.
- VISIT CLINICS TO ENSURE PROPER PROCEDURES BEING FOLLOWED
- SCHEDULING ISSUES. DON'T NOTIFY DRIVER OF A RANDOM TEST AT 4PM. ALLOW ENOUGH TIME FOR 3 HOUR COLLECTION.

Post Accident Testing Requirements

- Fatality – Drug and Alcohol Testing Mandatory
- Disabling Damage to any vehicle involved in the accident, requiring the vehicle to be towed away from the scene
 - ❖ Coupled with CDL Driver receiving a moving traffic violation
- Any individual suffered a bodily injury and immediately received medical treatment away from the scene of the accident
 - ❖ Coupled with CDL Driver receiving a moving traffic violation

Post Accident Testing Challenges

Post Accident Testing Documentation

Alcohol Testing:

- Must be performed as soon as possible but no later than eight hours following the accident;
- If not done within 2 hours, document, why?
- If alcohol test cannot be performed within eight hours, the employer must cease all attempts and document the reason.

Drug Testing:

- Must be performed as soon as possible but no more than 32 hours after the accident; the employer must cease all attempts if 32 hours have passed and document the reason why the test was not performed.

WHAT IS ON THE HORIZON

- 2020 NATIONAL CLEARINGHOUSE
- K2/SPICE (SYNTHETIC THC)
- HAIR TESTING
- ORAL FLUID TESTING

Clearinghouse at a Glance

- The Drug and Alcohol Clearinghouse is a database created by FMCSA to house drug and alcohol violations for commercial vehicle drivers. It is designed to help FMCSA and motor carriers better identify commercial drivers who are prohibited from operating commercial vehicles due to drug & alcohol violations and refusals to test.

Employer/Carrier Responsibility

- Employers must register with the clearinghouse and perform queries on current employees annually. When hiring a CDL driver, carriers must search the clearinghouse to see if the driver has any drug or alcohol violations.

Record Availability

- Records of violations remain in the clearinghouse until all the following provisions are met and
- reported to the database:
 - 1. The driver completes a SAP evaluation and recommended education/treatment process
 - 2. The driver receives a negative return-to-duty test
 - 3. The driver successfully completes all follow-up tests
 - 4. Five years have passed from the day the violation is submitted.

Implementation

- The clearinghouse is scheduled to start on January 6, 2020 and will only contain violations that occur on or after this date. Data within the clearinghouse is referenced by the driver's CDL and date of birth.

Most Useful Resources For Compliance

- Pertinent website links for your computer access.
 - 49 CFR Part 40- <https://www.transportation.gov/odapc/part40>
 - What Employers Need to Know-
<https://www.fmcsa.dot.gov/regulations/drug-alcohol-testing/overview-drug-and-alcohol-rules>
 - <https://www.fmcsa.dot.gov/regulations/drug-alcohol-testing/drug-and-alcohol-faqs>
 - <https://www.transportation.gov/odapc/dot-recreational-marijuana-notice>
 - <https://www.transportation.gov/odapc/medical-marijuana-notice>

QUESTIONS?

