



SAFETY DIRECTOR BULLETIN



CDL: FAILED OR REFUSED DRUG OR ALCOHOL TEST BEST PRACTICES

The Federal Motor Carrier Safety Administration and the Federal Transit Authority require certain specific actions to be taken by the employer following a failed or refused drug or alcohol test by a Commercial Driver's License (CDL) driver. There are six types of drug and alcohol tests:

1. Pre-employment
2. Random
3. Reasonable Suspicion
4. Post-Accident
5. Return-to-Duty
6. Follow-up

When the Designated Employee Representative (DER) is notified by the alcohol or drug test collector of a failed or refused test, or by the Medical Review Officer of a failed drug test, the employer must take certain actions.

- Immediately contact the driver and have them cease performing any safety-sensitive function. If they are on the road, have them park the vehicle and arrange to have the driver and vehicle returned to the office. Make sure the direction is kept private between the driver and the driver only.
- Call the driver into the office to have a confidential conversation. A copy of the employer's CDL Drug & Alcohol Policy should be present for referral if needed. The DER or employer representative must provide the following information to the employee or prospective employee if it involves a Pre-employment drug & alcohol test:
 - If the employee failed a drug test, the Medical Review Officer (MRO) would have advised the employee of their right to request a split specimen test within 72 hours. Confirm that the employee is aware of this right. Arrange for the test if requested by the employee. Inform the employee who will pay the cost of the split-specimen test in accordance with the agency's policy. The test must be immediately scheduled regardless of payment plan.
 - The employee should be told which drug or drugs they failed for.
 - For alcohol confirmation tests that show a blood alcohol concentration (BAC) of between 0.020 and 0.039, the CDL driver must be removed from performing safety-sensitive functions for 24 hours or start of next scheduled shift from the time of this result. This is not reported to the Clearinghouse.
 - For alcohol confirmation tests that show a BAC 0.040 or higher, advise the person that they cannot perform a safety-sensitive function until they have completed an evaluation by a Substance Abuse Professional (SAP), complete any treatment required by the SAP, and pass a Return-to-Duty alcohol test.
 - Provide the name and contact information for one or more SAPs that are acceptable to the employer and MRO. This must be done even if the CDL driver is terminated or a prospective employee is not hired. Explain that the FMCSA and FTA require DOT-certified SAPs to be used and only those acceptable to the employer and MRO. Explain who will pay for SAP services under the employment contract.
 - Explain any employer-specific consequences and processes beyond the minimum actions of the FMCSA or FTA provided above.

A failed or refused drug or alcohol test starts a process of information that must be entered into the FMCSA Drug & Alcohol Clearinghouse. The table below lays out who reports what information to the FMCSA Clearinghouse.

Information to be Reported	Reporting Entity
<ul style="list-style-type: none"> ▪ An Alcohol Confirmation Test with a concentration of 0.040 or higher ▪ Refusal to test for alcohol as required in 49 CFR 40.261 ▪ Refusal to test for a drug that was not required by the MRO as specified in 49 CFR 40.191 ▪ Actual knowledge that a driver has used alcohol on duty, within 4 hours of coming on duty, or prior to post-accident testing as specified in 49 CFR 382.107 ▪ Actual knowledge that a driver has used a controlled substance as specified in 49 CFR 382.107 ▪ A negative Return-to-Duty test result, drug or alcohol ▪ Upon verified completion of Follow-up drug and alcohol testing 	<p>The employer, or</p> <p>Prospective employer, if the information is from a pre-employment test, or</p> <p>The service agent authorized to act on behalf of the employer (it is the employer’s responsibility to verify the service agent completed this within the 3-day reporting period)</p>
<ul style="list-style-type: none"> ▪ Verified positive, adulterated, or substituted drug test result ▪ Refusal to test for drug requiring a determination by the MRO as specified in 49 CFR 40.191 	<p>The MRO (Medical Review Officer)</p>
<ul style="list-style-type: none"> ▪ Date of initial assessment after a positive drug or alcohol test ▪ Successful completion of treatment and/or education, and the driver is eligible for Return-to-Duty testing. 	<p>The SAP (Substance Abuse Professional)</p>

It is critical that New Jersey public employers of CDL-holders comply with FMCSA and FTA regulations after a failed or refused drug or alcohol test. Employers should review their written CDL policies regularly, as regulations can and do change. Policies should be periodically reviewed with employees.