

CT Statewide Drug and Alcohol Testing Consortium Newsletter

MARCH 2023

Clearinghouse Requirements Do Not Apply to FTA Employers

Reminder:

In a **Final Rule** published on September 29, 2022, the Federal Motor Carrier Safety Administration (FMCSA) amended its drug and alcohol testing regulation, 49 CFR Part 382, to indicate that beginning January 6, 2023, a pre-employment Clearinghouse query will satisfy the requirement to investigate a prospective driver's previous drug and alcohol program violations, as set forth in 49 CFR § 391.23(e)(4) and § 382.413(b).

FMCSA Clearinghouse requirements are not applicable to employers covered only by FTA. Commercial Driver's License (CDL) drivers who **only** perform FTA-regulated safety-sensitive functions are exempt from Part 382, including any Clearinghouse requirements. Any positive drug tests, refusals to test, or alcohol results of 0.04 or greater on tests conducted under FTA authority should not be reported to the Clearinghouse, even if the employee has a CDL.

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If an applicant was employed by any DOT-regulated employers, including FMCSA-regulated employers, in the two years preceding the date of the applicant's application, the FTA-regulated employer should continue to request drug and alcohol testing information directly from those employers, as required in 49 CFR § 40.25.

FTA Drug and Alcohol Program National Conference

The 16th Annual FTA Drug and Alcohol Program National Conference was held on March 14-16, 2023, at the Wyndham San Diego Bayside, San Diego, CA. This year, the conference was a hybrid event, with some sessions available to a remote audience. For the presentations of this conference, visit the FTA Drug and Alcohol Program website at:

<https://transit-safety.fta.dot.gov/DrugAndAlcohol/Training/NatConf/2023/Register.aspx>

Select: *Presentations and Course Descriptions*

FTA Drug and Alcohol Regulation Updates – Issue 77

<https://www.transit.dot.gov/sites/fta.dot.gov/files/2023-01/FTA-Drug-and-Alcohol-Regulations-Updates-January-2023-Issue-77.pdf>

Check the above link for this FTA Issue 77 that includes the following updates:

- 16th Annual FTA Drug and Alcohol Program National Conference
- Management Information System (MIS) Reporting Began on January 1
- Reminder: Clearinghouse Requirements Do Not Apply to FTA Employers
- Errors that May Cause Cancelled Tests If Not Corrected

- Dual Mode Employers & MIS Reports
 - Correcting Errors When A Collector Is Unavailable
 - Clarifying FTA's Post-Accident Time Limits
 - Employer Consequences for Violations
 - Reminder: DOT Does Not Authorize the Use of Marijuana
 - Alcohol Confirmation Tests Must Have A Printed Result
 - Service Agents Must Individually Subscribe to ODAPC List-Serve
 - TPA Reports & Laboratory Statistical Summaries for Employers
 - Post-Accident Testing: "Removed from Service" Applies Only to Rail Cars, Trolleys, and Vessels
 - Previous Employer Inquiries (49 CFR § 40.25) and Background Check Companies
 - Arbitration
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Reminder - DOT Does Not Authorize the Use of Marijuana

Although many states have legalized the use of recreational and medical marijuana, these state initiatives do not have any bearing on DOT's regulated drug testing program. DOT's Drug and Alcohol Testing Regulation – 49 CFR Part 40 – does not authorize the use of Schedule I drugs, including marijuana, for any reason. DOT has several public notices addressing marijuana use by DOT covered employees. These notices are available to view and download on this website:

<https://www.transportation.gov/odapc/program-guidance>



DOT OFFICE OF DRUG AND ALCOHOL POLICY AND COMPLIANCE (ODAPC) "CBD" NOTICE

The Agricultural Improvement Act of 2018, Pub. L. 115-334, (Farm Bill) removed hemp from the definition of marijuana under the Controlled Substances Act. Under the Farm Bill, hemp-derived products containing a concentration of up to 0.3% tetrahydrocannabinol (THC) are not controlled substances. THC is the primary psychoactive component of marijuana. Any product, including "Cannabidiol" (CBD) products, with a concentration of more than 0.3% THC remains classified as marijuana, a Schedule I drug under the Controlled Substances Act.

We have had inquiries about whether the Department of Transportation-regulated safety-sensitive employees can use CBD products. Safety-sensitive employees who are subject to drug testing specified under 49 CFR part 40 (Part 40) include: pilots, school bus drivers, truck drivers, train engineers, transit vehicle operators, aircraft maintenance personnel, fire-armed transit security personnel, ship captains, and pipeline emergency response personnel, among others.

It is important for all employers and safety-sensitive employees to know:

1. The Department of Transportation requires testing for marijuana and not CBD.
2. The labeling of many CBD products may be misleading because the products could contain higher levels of THC than what the

product label states. The Food and Drug Administration (FDA) does not currently certify the levels of THC in CBD products, so there is no Federal oversight to ensure that the labels are accurate. The FDA has cautioned the public that: "Consumers should beware purchasing and using any [CBD] products." The FDA has stated: "It is currently illegal to market CBD by adding it to a food or labeling it as a dietary supplement."* Also, the FDA has issued several warning letters to companies because their products contained more CBD than indicated on the product label. **

3. The Department of Transportation's Drug and Alcohol Testing Regulation, Part 40, does not authorize the use of Schedule I drugs, including marijuana, for any reason. Furthermore, CBD use is not a legitimate medical explanation for a laboratory-confirmed marijuana positive result. Therefore, Medical Review Officers will verify a drug test confirmed at the appropriate cutoffs as positive, even if an employee claims they only used a CBD product.

It remains unacceptable for any safety-sensitive employee subject to the Department of Transportation's drug testing regulations to use marijuana. Since the use of CBD products could lead to a positive drug test result, Department of Transportation-regulated safety-sensitive employees should exercise caution when



DOT OFFICE OF DRUG AND ALCOHOL POLICY AND COMPLIANCE (ODAPC) "CBD" NOTICE (Continued)

considering whether to use CBD products.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. This policy and compliance notice is not legally binding in its own right and will not be relied upon by the Department as a separate basis for affirmative enforcement action or other administrative penalty. Conformity with this policy and compliance notice is voluntary only and nonconformity will not affect rights and obligations under existing statutes and regulations. Safety-sensitive employees must continue to comply with the underlying regulatory requirements for drug testing, specified at 49 CFR part 40.

February 18, 2020

* What You Need to Know (And What We're Working to Find Out) About Products Containing Cannabis or Cannabis-derived Compounds, Including CBD: *The FDA is working to*

answer questions about the science, safety, and quality of products containing cannabis and cannabis-derived compounds, particularly CBD."
<https://www.fda.gov/consumers/consumer-updates/what-you-need-know-and-what-were-working-find-out-about-products-containing-cannabis-or-cannabis>

** <https://www.fda.gov/news-events/public-health-focus/warning-letters-and-test-results-cannabidiol-related-products>

RANDOM SELECTION

Reminder:

Random Selections are generated around the 25th of the month preceding the quarter, ie March 24th for 2nd Quarter (April 1st - June 30th) selections. Please ensure that your active and covered employee rosters are as accurate as possible within the DISA360 portal before that time. This ensures that all active employees are eligible for the selection. Also; please reach out to Candice Rouisse (DTCCAR@disa.com), if you have any questions.

Drug and Alcohol Testing Program Third DISA Global Solutions, Inc.

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24-Hour Drug & Alcohol Testing On-Site

Post-Accident

Reasonable Suspicion

1-800-967-3135 Toll-Free Emergency Line

Be prepared to provide the following information:

Your Name & Agency Name

Phone Number

Location of Incident

Reason for Call (Post-Accident or Reasonable Suspicion)

Medical Review Officer (MRO) Department

University Services

Richard Weinstein, MD

2800 Black Lake Place,

Suite A

Philadelphia, PA 19154

Phone: 800-624-3784

Fax: 215-637-6998

Enhance Awareness of the Employee Assistance Program (EAP)

Note: This letter from The Lexington Group should be made available to safety-sensitive employees and posted in the break room



The Lexington Group

Your Employee Assistance Program

A Woman Owned Enterprise Since 2000

Dear CT Drug Consortium Employees and Family Members:

The Lexington Group Employee Assistance Program (EAP) provides CONFIDENTIAL face-to-face and virtual counseling services to assist employees in identifying and resolving personal problems. Examples include marriage and family issues, job stress, alcohol and drug abuse, depression and other emotional concerns. The Lexington Group services also include referral resources for legal, financial, eldercare, and childcare through the Life Care program.

Because employee lives may be affected by problems with a spouse or other family members, this program is extended to household family members as well. You or your household family members may contact your EAP directly at any time. No matter what your situation, any assistance you seek through the EAP is held in the strictest confidence. Involvement will not jeopardize your job security, future promotional opportunities or reputation.

For confidential and immediate access, you may call The Lexington Group 24/7 at:

1-800-676-HELP (4357)

You may also request services or read more about the program online at:

www.The-Lexington-Group.com

Your unique employee password is "CTDrugConsort"

We hope you will share our enthusiasm for The Lexington Group, Employee Assistance Program, and the opportunity it presents to help you and your family.

Sincerely,
The Lexington Group



Scan to go to website

Contact & Resource Information

DISA Global Solutions, Inc.

Formerly Occupational Drug Testing (ODT)

www.Disa.com

Toll Free # 800-211-4469

The Lexington Group

www.The-Lexington-Group.com

Toll Free # 800-571-0197

Employee Assistance Program

1-800-676-HELP (4357)

Request clinical services online directly from the web site at:

www.The-Lexington-Group.com

To log on, your customer name is "CT Drug Consortium"

And your unique employee password is "CTDrugConsort"

Are you aware of the availability of program forms and resource documents on

GHTD's website? Go to:

<https://www.hartfordtransit.org/about/drug-alcohol-testing-consortium/>

Also, checkout the following materials:

What Employers Need to Know About DOT Drug and Alcohol Testing

What Employees Need to Know About DOT Drug and Alcohol Testing

Resources for The Designated Employer Representative (DER)

Lexington Newsletters

FTA Regulation Update Issues

The following FTA website provides a wealth of information such as trainings, newsletters, etc. on the Drug and Alcohol Testing Program that you might find very helpful:

www.fta.dot.gov/12533.html

You may also find Title 49 Parts 40 and 655 (FTA regulations on the drug and alcohol testing program) by using the Search engine.