

FMCSA RULE REQUIRES EMPLOYERS TO OBTAIN ADDITIONAL PREVIOUS DRUG AND ALCOHOL TESTING RECORDS ON ALL CDL APPLICANTS.

DOT regulation 49 CFR Part 40 requires all employers subject to the DOT agency drug and alcohol testing regulations, to obtain drug and alcohol violation information from previous employers of individuals being hired or transferred into DOT safety-sensitive positions. Employers must obtain a written release from their applicants that specifies all employers for whom they have worked in the prior two (2) years. **In late 2004, the Federal Motor Carrier Safety Administration (FMCSA) increased the drug and alcohol records check to the prior three (3) years and expanded the information that employers must obtain from previous employers for CDL applicants.**

All DOT regulated employers are required to obtain the following information in accordance with §40.25:

1. Alcohol test results with an alcohol concentration of 0.04 or higher;
2. Verified positive drug test results;
3. Refusals to be tested (including verified adulterated or substituted drug test results);
4. Other violations of DOT agency drug and alcohol testing regulations; and
5. With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return to duty requirements (including follow up tests).

Employers hiring for CDL positions must also obtain the following:

6. Whether the driver failed to undertake or complete a rehabilitation program prescribed by a substance abuse professional (SAP). (If the previous employer does not know this information (e.g., an employer that terminated an employee who tested positive on a drug test), the prospective motor carrier must obtain documentation of the driver's successful completion of the SAP's referral directly from the driver.)
7. For a driver who had successfully completed a SAP's rehabilitation referral, and remained in the employ of the referring employer, information on whether the driver had the following testing violations subsequent to completion of the return to duty process.
 - i. Alcohol tests with a result of 0.04 or higher alcohol concentration;
 - ii. Verified positive drug tests;
 - iii. Refusals to be tested (including verified adulterated or substituted drug test results).

This drug and alcohol background check applies to applicants/employees seeking to begin performing safety sensitive functions for the first time, i.e., a new hire, or a current employee

who is transferring into a safety sensitive position. Only DOT-mandated drug and alcohol violations and/or drug and alcohol tests are covered by these regulations. Employers should request and obtain the required information before the individual begins performance of safety-sensitive duties. If an employee begins work before the information is received, the employer may not continue to use the employee in a safety-sensitive position after 30 days, unless the information has been obtained or a “good faith effort” to get the information has been documented.

The employer must provide a copy of the applicant/employee’s signed written release when requesting the drug and alcohol violation information. The previous employers must respond to the request in writing, even if the individual had no violations or was not employed in a DOT-covered position.

Questions & Answers

- Q.** The regulation requires that I, as the employer, obtain written consent from the applicant/employee before I attempt to obtain the previous drug and alcohol testing records. What if the applicant/employee refuses to give me his/her written consent?
- A.** You cannot permit this individual to perform safety sensitive functions.
- Q.** Do I, as the employer, have to obtain the information from previous employers before I can use the individual to perform safety sensitive functions?
- A.** No. You may permit the individual to perform safety sensitive functions for 30 days while you await this information. However, ideally, you should obtain this information before the individual first performs a safety sensitive function.
- Q.** What happens if I don’t receive the information from the previous employer within 30 days?
- A.** You cannot permit the employee to perform safety functions after 30 days, unless you have made and documented a good faith effort to obtain the information.
- Q.** Must I provide previous employers with a copy of the applicant’s/employee’s written consent when I request the information?
- A.** Yes.
- Q.** What happens if I find out that the applicant/employee did have a DOT violation with a previous employer?
- A.** You must not permit the individual to perform a safety sensitive function unless the individual can document that he/she was evaluated by a Substance Abuse Professional (SAP) and successfully completed the DOT return to duty requirements.
- Q.** Can FirstLab conduct these Drug and Alcohol Background Checks for me?
- A.** Yes. FirstLab has dedicated a team of employees who are trained to conduct the required drug and alcohol background check in accordance with the DOT regulations. We guarantee that you will receive a complete report within the required 30-day time limit.

FOR FURTHER INFORMATION PLEASE CONTACT FIRSTLAB’S BUSINESS DEVELOPMENT DEPARTMENT AT 800-732-3784 OR MKT@FIRSTLAB.COM