

ALCOHOL & DRUGS: DOT COMPLIANCE MANUAL

What are my obligations if an applicant tests positive?

The U.S. Department of Transportation does not address issues of hiring or retention. Your company policy would dictate if the applicant is given further consideration. Under the DOT regulations, you must, at a minimum, supply the applicant with a list of Substance Abuse Professionals (SAPs) free of charge. If you do not have another face-to-face contact with the applicant, you still must ensure he/she obtains the list. This could be achieved by mailing the list. It is important to document your actions (what was sent, to whom, where (address), and when) to demonstrate compliance if this were ever to come into question.

You are not obligated to have any additional contact with the applicant. However, you must retain the chain of custody and signed result for five years in accordance with §40.333 and §382.401. In the event the driver discloses this violation to a future or current employer, you may be called upon to release information surrounding the test. You cannot release it to the third-party until you receive a specific written consent from the applicant in accordance with §40.321(b).

If you pursue employment with the applicant, you would need to make sure that all the steps in the DOT return-to-duty process in Subpart O of Part 40 are completed. This would be true of any employer who utilizes the driver going forward.

Does a mechanic or yard jockey need to be in our random selection?

It is important to remember that the Federal Motor Carrier Safety Administration (FMCSA) defines any person who operates a commercial motor vehicle (CMV) as a driver. It does not distinguish between a person who operates a CMV intermittently and one whose primary job is driving. A driver by any other name is still a driver under the Federal Motor Carrier Safety Regulations (FMCSRs). If someone operates a CMV as defined in §390.5 on a public highway in interstate commerce, he or she is subject to Parts 390 through 396. In the same respect, if someone operates a CMV as defined in §§382.107 and 383.5 on a public highway in any kind of commerce, he or she needs to hold a CDL with the proper endorsements and be placed in the carrier's DOT alcohol and drug testing program.

What if the employee never leaves your property? A public highway can surprisingly include private property. A motor carrier will need to look at its operation to see if its parking lot or yard meets the following requirements. Highway is defined in §390.5 as "any road, street, or way, whether on public or private property, open to public travel."

"Open to public travel" in general terms means that the road is open to the general public for use without restrictive gates and prohibitive signs. Based on this, a mechanic, dispatcher, or supervisor who just moves a CMV out of a garage to a parking space could possibly be subject to the FMCSRs. If you have discovered that you have more *drivers* than you realized, it is important to start the required paperwork on the drivers as soon as possible. Although you are still in violation of the regulations for not having completed the paperwork earlier, you are demonstrating to the FMCSA your "good faith" effort going forward.