

## DOT OFFICE OF DRUG AND ALCOHOL POLICY AND COMPLIANCE NOTICE

Recently, the Department of Justice (DOJ) issued guidelines for Federal prosecutors in states that have enacted laws authorizing the use of “medical marijuana.” <http://www.justice.gov/opa/documents/medical-marijuana.pdf>. We have had several inquiries about whether the DOJ advice to Federal prosecutors regarding pursuing criminal cases will have an impact upon the Department of Transportation’s long standing regulation about the use of marijuana by safety-sensitive transportation employees – pilots, school bus drivers, truck drivers, train engineers, subway operators, aircraft maintenance personnel, transit fire-armed security personnel, ship captains, and pipeline emergency response personnel, among others.

We want to make it perfectly clear that the DOJ guidelines will have no bearing on the Department of Transportation’s regulated drug testing program. We will not change our regulated drug testing program based upon these guidelines to Federal prosecutors. The Department of Transportation’s Drug and Alcohol Testing Regulation – 49 CFR Part 40, at 40.151(e) – does not authorize “medical marijuana” under a state law to be a valid medical explanation for a transportation employee’s positive drug test result.

That section states: § 40.151 What are MROs prohibited from doing as part of the verification process? As an MRO, you are prohibited from doing the following as part of the verification process: (e) You must not verify a test negative based on information that a physician recommended that the employee use a drug listed in Schedule I of the Controlled Substances Act. (e.g., under a state law that purports to authorize such recommendations, such as the “medical marijuana” laws that some states have adopted.)

Therefore, Medical Review Officers will not verify a drug test as negative based upon information that a physician recommended that the employee use “medical marijuana.” Please note that marijuana remains a drug listed in Schedule I of the controlled Substances Act. It remains unacceptable for any safety-sensitive employee subject to drug testing under the Department of Transportation’s drug testing regulations to use marijuana. We want to assure the traveling public that our transportation system is the safest it can

## Part 40 DOT Policies Notice

### DOT Drug Testing: Employer DOT Policies – the Part 40 Changes

The DOT Agencies & United States Coast Guard (USCG) have provided guidance to DOT-regulated employers about what their DOT policies will need to contain about the changes to 49 CFR Part 40, which are effective January 1, 2018.

1. The Federal Transit Administration, Federal Motor Carrier Safety Administration, Federal Aviation Administration, Pipeline and Hazardous Materials Safety Administration, Federal Railroad Administration, and USCG take this position:

There is no need for employers to make any changes if their current DOT policies refer to adhering to "... Part 40." However, there are exceptions when an employer's DOT policy lists the following optional information:

- If sub-categories of drugs tested under the 5-panel are listed – for example, if a policy lists "Opiates (codeine, heroin, & morphine)" and/or "Amphetamines (amphetamine, methamphetamine, MDMA, MDA, MDEA), then "Opiates" needs to change to "Opioids (codeine, heroin, morphine, oxycodone, oxymorphone, hydrocodone, hydromorphone)" and "MDEA" will need to be removed from the list under Amphetamines. If however, employers would like to delete the sub-categories of drugs, doing so will also be acceptable.
- Likewise, if cut-off levels are listed in current policies, employers must update those cut-off levels. Again, employers may simply delete the cut-off levels completely and be in compliance if the DOT policy refers to adhering to "... Part 40."
- While these DOT Agencies and USCG suggest that employers provide written notice to employees about their updated DOT policies, doing so is an employer's prerogative.

2. This document replaces the previous Employer DOT Policies - Part 40 Changes notice from 2010.

December 1, 2017

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[What medications disqualify a CMV driver?](#)

A driver cannot take a controlled substance or prescription medication without a prescription from a licensed practitioner.

If a driver uses a drug identified in 21 CFR 1308.11 (391.42(b)(12)) or any other substance such as amphetamine, a narcotic, or any other habit forming drug, The driver is medically unqualified.

There is an exception: the prescribing doctor can write that the driver is safe to be a commercial driver while taking the medication. In this case, the Medical Examiner may, but does not have to certify the driver.

Any anti-seizure medication used for the prevention of seizures is disqualifying.

The Medical Examiner has 2 ways to determine if any medication a driver uses will adversely affect safe operation of a CMV:

1. Review each medication - prescription, non-prescription and supplement
2. Request a letter from the prescribing doctor

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