

# Texas Department of Public Safety School Bus Transportation



## Federal DOT Standards For Controlled Substance And Alcohol Testing 49 CFR Part 382

1

### **COURSE OBJECTIVES**

- ◉ CDL Overview
- ◉ Drug & Alcohol Testing Requirements
- ◉ Reporting of Positive Test Results
- ◉ Prohibitions
- ◉ Previous Employer Inquiries
- ◉ Record Keeping
- ◉ Federal CDL Drug & Alcohol Clearinghouse



2

## Applicability to 49 CFR Part 382

If you are required by law to have a CDL to operate a specific type of vehicle, you are **REQUIRED** to be drug and alcohol tested.

Rule of thumb



3

## COMMERCIAL DRIVERS LICENSE OVERVIEW



- Purpose and Scope
- Applicability & Exceptions
- Vehicle Groups
- Endorsements
- Restrictions

4

## PURPOSE AND SCOPE

- Purpose of this is to help reduce or prevent truck and bus accidents, fatalities, and injuries by:
  - Requiring drivers to have a single valid commercial motor vehicle driver's license
  - Disqualifying drivers who operate commercial motor vehicles in an unsafe manner



5

## APPLICABILITY & EXCEPTIONS

- Applies to interstate, foreign, or intrastate commerce
- The exceptions contained in 49 CFR §390.3(f) do not apply to the CDL requirements.
- Exceptions:
  - Military personnel operating military vehicles
  - Farmer/Rancher operating a vehicle classified as a CMV
  - Firefighters or Emergency Vehicle operators
  - Emergency Response Vehicle Drivers
  - Drivers Removing Snow and Ice
  - Persons operating recreational vehicle for personal use



6

# Commercial Driver's License (CDL)

## COMMERCIAL MOTOR VEHICLE GROUPS

### Group A (Combination Vehicle)

Any combination of vehicles with a gross combination weight rating (GCWR) of 26,001 pounds or more, provided the gross vehicle weight rating (GVWR) of the vehicle(s) being towed is in excess of 10,000 pounds.



### Group B (Heavy Straight Vehicle)

Any single vehicle with a GVWR of 26,001 pounds or more, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR.



### Group C (Small Vehicle)

Any single vehicle, or combination of vehicles, that meets neither the definition of Group A nor Group B, but is designed to transport 16 or more passengers including the driver, or is used in the transportation of materials found to be hazardous which require the motor vehicle to be placarded. This includes any quantity of chemical or biological material or agent posing a threat to national security, including toxins.



Revised 01/08



# Commercial Driver's License (CDL)

## CDL ENDORSEMENTS

### Double/Triple Trailers (T)



### Passenger Vehicles (P)



### Tank Vehicles (N)



### Hazardous Materials (H) (any size vehicle)



### School Buses (S)



### Tank & Hazardous Materials (X)



Both will require a knowledge & skills test



# Commercial Driver's License (CDL)

## CDL ENDORSEMENTS

### Passenger Vehicles (P)



### School Buses (S)



### FMCSA Interpretation

#### Question:

Are drivers required to have both the "P" passenger and "S" school bus endorsements if they are not transporting students when operating a "school bus" as defined in 49 CFR §383.5.

#### Guidance:

No. Only drivers actually transporting pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school sponsored events in a school bus are required to have both the "P" and "S" endorsements. Only a "P" endorsement is required by drivers delivering school buses from the manufacturers, by mechanics and other drivers operating empty school buses, and by drivers transporting students and/or adults to and from events that are not sponsored by the school.



9

# Commercial Driver's License (CDL)

## CDL ENDORSEMENTS

### Passenger Vehicles (P)



### School Buses (S)



### FMCSA Interpretation

#### Question:

Is a person who drives an empty school bus from the manufacturer to the local distributor required to obtain a CDL?

#### Guidance:

Yes. Any driver of a bus that is designed to transport 16 or more passengers or that has a GVWR of 26,001 pounds or greater is required to obtain a CDL in the applicable class. A passenger endorsement is also required if the bus is designed to transport 16 or more passengers, including the driver.



10

## Commercial Driver's License (CDL)

### TEXAS CDL RESTRICTIONS

- ⦿ L - vehicles without air brakes. Licensee is restricted to operating a CMV which does not have air brakes.
- ⦿ K - Intrastate only.
- ⦿ P - Personal Restrictions. Licensee is restricted to operating a motor vehicle per the restriction on their CDL.
- ⦿ Y - Valid Texas vision or limb waiver required.



11

### NOTIFICATION TO EMPLOYER

- ⦿ Upon conviction for any State or local traffic violation, a driver must notify employer(s) within 7 days. Notification must be in writing and include the following information:
  - Driver's full name
  - Driver's license number
  - Date of conviction
  - Details about the offense, including any resulting suspension, revocation, or cancellation of driving privileges
  - Indication of whether the violation happened in a CMV
  - Location of offense, and
  - Drivers signature



12



## CONTROLLED SUBSTANCE AND ALCOHOL USE AND TESTING

- Applicability
- Exemptions
- Types of Alcohol & Controlled Substance Tests
- Retention of Records
- Access to Records
- Supervisor Training

13

## APPLICABILITY

- ◉ Drivers required to have a CDL are subject to the controlled substance and alcohol testing rules.



- ◉ **REMEMBER!** Exemptions from other parts of federal safety regulations do not apply to CDL and drug/alcohol testing.



14

## DEFINITIONS

- ◎ **Actual Knowledge** – Actual knowledge by an employer that a driver has used alcohol or controlled substances based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substance use.



15

## DEFINITIONS

- ◎ **Refuse to Submit** –
  - 1.) Fail to appear for any test (except pre-employment) within a reasonable time, as determined by the employer;
  - 2.) Fail to remain at the testing site until the testing process is complete;
  - 3.) Fail to provide a urine specimen for any drug test;
  - 4.) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the driver's specimen;
  - 5.) Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
  - 6.) Fail or declines to take a second test the employer or collector has directed the driver to take;
  - 7.) Fail to cooperate with any part of the testing process (i.e., refuse to empty pockets when directed, or behaves in confrontational way that disrupts the collection process; or
  - 8.) Is reported by the MRO as having a verified adulterated or substituted test result.



16



## DEFINITIONS

- ◉ **Safety-sensitive function** - all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:
  - (1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
  - (2) All time inspecting equipment as required by §§392.7 and 392.8 of this subchapter or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
  - (3) All time spent at the driving controls of a commercial motor vehicle in operation;
  - (4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of §393.76 of this subchapter);
  - (5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
  - (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.



17

## TYPES OF TESTS REQUIRED

- ◉ Pre-employment
- ◉ Random
- ◉ Reasonable Suspicion
- ◉ Post Accident
- ◉ Return-to-Duty
- ◉ Follow-up



18

## WHAT DRUGS DO LABORATORIES TEST FOR?

- Five-Panel Drug Test includes:
  - Marijuana
  - Cocaine
  - Phencyclidine (PCP)
  - Amphetamines
  - Opiates



19

## TEST REQUIRED: PRE-EMPLOYMENT

- No employer shall allow a driver to perform a safety-sensitive function until they have received a **negative controlled substance** pre-employment test result.
- Also applies when a current employee is transferring from a non-safety sensitive position to a safety sensitive job for the first time.
  - **NOTE: ALCOHOL TESTING IS NOT REQUIRED**



20

## TEST REQUIRED: PRE-EMPLOYMENT

### FMCSA Interpretation

**Question:**

Must school bus drivers be pre-employment tested after they return to work after summer vacation in each year in which they do not drive for 30 consecutive days?

**Guidance:**

A school bus driver whom the employer expects to return to duty the next school year does not have to be pre-employment tested as long as the driver has remained in the random selection pool over the summer. There is deemed to be no break in employment if the driver is expected to return in the fall.



21

## TEST REQUIRED: RANDOM

- ◎ You must randomly test drivers at a minimum annual percentage rate of:
  - Alcohol testing 10 %
  - Controlled Substance 25 % (2016)

The 10% and 25% tests mean the number of tests performed not necessarily the number of drivers tested. One driver can be called more than once.



22

## TEST REQUIRED: RANDOM

- ⦿ Tests must be unannounced
- ⦿ Test dates must be spread reasonably throughout the calendar year
- ⦿ All drivers must have an equal chance of being selected.
- ⦿ Scientifically Valid Method
  - Random number table
  - Computer-based random number generator

**NOTE: Drawing slips of paper from a container IS NOT SCIENTIFICALLY VALID.**



23

## TEST REQUIRED: RANDOM

### FMCSA Interpretation

#### Question:

How should a random testing program be structured to account for the schedules of school bus or other drivers employed on a seasonal basis?

#### Guidance:

If no school bus drivers from an employer's random testing pool are used to perform safety-sensitive functions during the summer, the employer could choose to make random selections only during the school year. If the employer nevertheless chooses to make selections in the summer, tests may only be administered when the drivers return to duty.

If some drivers continue to perform safety-sensitive functions during the summer, such as driving buses for summer school, an employer could not choose to forego all random selections each summer. Such a practice would compromise the random, unannounced nature of the random testing program. The employer would test all selected drivers actually driving in the summer. With regard to testing drivers not driving during the summer, the employer has two options. One, names of drivers selected who are on summer vacation may be returned to the pool and another selection made. Two, the selected names could be held by the employer and, if the drivers return to perform safety-sensitive functions before the next random selection, the test administered upon the drivers' return.

Finally, it should be noted that reductions in the number of drivers during summer vacations reduces the average number of driving positions over the course of the year, and thus the number of tests which must be administered to meet the minimum random rate.



24

## TEST REQUIRED: RANDOM

### FMCSA Interpretation

**Question:**

If an employee is off work due to temporary lay-off, illness, injury or vacation, should that individual's name be removed from the random pool?

**Guidance:**

No. The individual's name should not be removed from the random pool so long as there is a reasonable expectation of the employee's return.



25

## TEST REQUIRED: RANDOM

### FMCSA Interpretation

**Question:**

Is it permissible to select alternates for the purpose of complying with the Random Testing regulations?

**Guidance:**

Yes, it is permissible to select alternates. However; it is only permissible if the primary driver selected will not be available for testing during the selection period because of long-term absence due to layoff, illness, injury, vacation or other circumstances.

In the event the initial driver selected is not available for testing, the employer and/or C/TPA must document the reason why an alternate driver was tested. The documentation must be maintained and readily available when requested by any DOT agency, or any State or local officials.



26

## TEST REQUIRED: RANDOM

### FMCSA Interpretation

Question:

If an employer joins a consortium, and the consortium is randomly testing at the appropriate rates, will these rates meet the requirements of the alcohol and controlled substances testing for the employer even though the required percent of the employer's drivers were not randomly tested?

Guidance:

Yes.

Under 49 CFR Part 40, a laboratory must transmit an aggregate statistical summary on a semi-annual basis.



27

## TEST REQUIRED: RANDOM

### FMCSA Interpretation

Question:

May an employer or consortium include non-DOT covered employees in a random pool with DOT-covered employees?

Guidance:

No.



28

## TEST REQUIRED: RANDOM

### FMCSA Interpretation

**Question:**

Once an employee is randomly tested during a calendar year, is his/her name removed from the pool of names for the calendar year?

**Guidance:**

No, the names of those tested earlier in the year must be returned to the pool for each new selection. Each driver must be subject to an equal chance of being tested during each selection process.



29

## TEST REQUIRED: REASONABLE SUSPICION

- ⦿ Required to alcohol and/or controlled substance test when employer has reasonable suspicion to believe a driver has violated prohibitions of subpart B.
- ⦿ Only a trained supervisor or company official who is trained in accordance with 49 CFR 382.603 shall make the required observations.
  - Training consists of at least 60 minutes of training on alcohol misuse and an additional 60 minutes of training on controlled substances use.
  - Recurrent training for supervisor personnel is not required.
- ⦿ Reasonable suspicious factors must be based on observations concerning:
  - Appearance, behavior, speech, or body odor.



30

## TEST REQUIRED: REASONABLE SUSPICION

### FMCSA Interpretation

**Question:**

May a reasonable suspicion alcohol test be based upon any information or observations of alcohol use or possession, other than a supervisor's actual knowledge?

**Guidance:**

No. Information conveyed by third parties of a driver's alcohol use may not be the only determining factor used to conduct a reasonable suspicion test. A reasonable suspicion test may only be conducted when a trained supervisor has observed specific, contemporaneous, articulable appearance, speech, body odor, or behavior indicators of alcohol use.



31

## TEST REQUIRED: POST-ACCIDENT

- As soon as practicable following an accident involving a CMV each employer shall test for alcohol and controlled substances for each surviving driver:
  - Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
  - Who receives a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:
    - Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
    - One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

Type of Accident	Citation Issued to CMV driver:	Test must be performed by employer:
Human Fatality	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>
	No <input type="checkbox"/>	Yes <input type="checkbox"/>
Bodily injury with immediate medical treatment away from the scene	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>
	No <input type="checkbox"/>	No <input type="checkbox"/>
Disabling damage to any motor vehicle requiring tow away	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>
	No <input type="checkbox"/>	No <input type="checkbox"/>



32



## TEST REQUIRED: POST-ACCIDENT

- ◉ Alcohol tests if not performed within 2 hours following the accident, a record shall be prepared and maintained on file stating the reasons the test was not promptly administered. After 8 hours cease attempts and maintain the same record.
- ◉ Controlled substance tests if not performed within 32 hours following the accident, a record shall be prepared and maintained on file stating the reasons the test was not promptly administered.



33

## TEST REQUIRED: POST ACCIDENT

### FMCSA Interpretation

#### Question:

May an employer allow a driver, subject to post-accident controlled substances testing, to continue to drive pending receipt of the results of the controlled substances test?

#### Guidance:

Yes. A driver may continue to drive, so long as no other restrictions are imposed by §382.307 or by law enforcement officials.



34



## **POSITIVE TEST RESULTS**

- Determine future employment
- Prohibited conduct flow chart
- Return-to-Duty testing
- Follow-up testing
- Reporting of Valid Positive Tests

35

## **IF VIOLATION OCCURRED IN ANY.....**

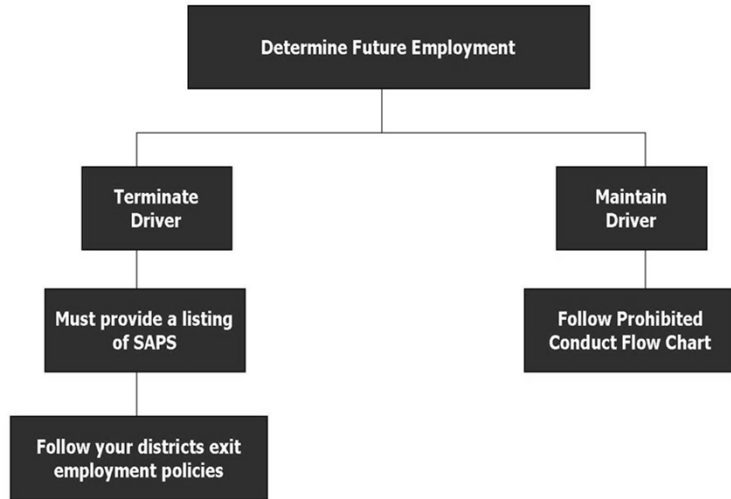
- ◎ Tests Required:
  - Random
  - Reasonable Suspicion
  - Post Accident
  - Return to Duty
  - Follow-up

You must not return the employee to the performance of safety-sensitive functions until or unless the employee successfully completes the return-to-duty process.



36

# POSITIVE TEST RESULT



37

## PROHIBITED CONDUCT FLOW CHART



38

- ✓ Don't forget, these tests are the employer's responsibility to conduct.
- ✓ Follow-up tests must be unannounced.
- ✓ You cannot substitute other tests (i.e., random) for follow-up testing.
- ✓ Return-to-duty and follow-up drug testing must be under direct observation.



39

## REMEMBER.....

- ◎ The requirement of the SAP's follow-up testing plan "follow the employee" to subsequent employers or through breaks in service.
  - **Example 1:** The employee returns to duty with Employer A. Two months afterward, after completing the first two of six follow-up tests required by the SAP's plan, the employee quits his job with Employer A and begins to work in a similar position for Employer B. The employee remains obligated to complete the four additional tests during the next 10 months of safety-sensitive duty, an Employer B is responsible for ensuring that the employee does so.



40

## REMEMBER.....

- ◎ The requirement of the SAP's follow-up testing plan "follow the employee" to subsequent employers or through breaks in service.
  - **Example 2:** The employee returns to duty with Employer A. Three months later, after the employee completes the first two of six follow-up tests required by the SAP's plan, Employer A lays the employee off for economic or seasonal employment reasons. Four months later, Employer A recalls the employee. Employer A must ensure that the employee completes the remaining four follow-up tests during the next nine months.



41

## FOLLOW-UP TESTING

### FMCSA Interpretation

#### Question:

May an employer conduct follow-up testing under company authority that goes beyond the follow-up testing which the SAP determines necessary?

#### Guidance:

No. The regulation and SAP guidelines state that employers must not impose additional testing requirements that go beyond the SAP's follow-up testing plan. This includes additional testing requirements under company authority.



42

# REPORTS OF VALID POSITIVE RESULTS

- Required to report to Texas DPS within **10 days** of receiving notice of valid positive alcohol or drug test.
- Submission Requirements.
  - Must be reported on form prescribed by DPS
  - Form available on DPS website under Forms – Motor Carrier
  - Can either mail or fax forms



## MCS-19 Form

REPORT OF VALID POSITIVE RESULT ON ALCOHOL TEST UNDER TRC 644.252	
<b>A. ID</b>	Name of Motor Carrier _____ Date of Alcohol Test _____
	Name of Individual Tested _____ Social Security Number _____ CDL Number & State _____ Birthdate _____
<b>B. CERTIFICATION OF BREATH ALCOHOL TECHNICIAN</b>	<p>By signing below, I, the Breath Alcohol Technician (BAT) certify the following:</p> <p>1. I am the BAT for the alcohol testing program or consortium of the motor carrier listed above.</p> <p>2. I am qualified under 49 CFR 40.273 to act as an BAT.</p> <p>3. This individual is subject to a report of a valid positive result of an alcohol test under TRC 644.252 because:</p> <p><input type="checkbox"/> The individual tested positive on an alcohol screening test, and tested at a _____ level on an alcohol confirmation test. <b>NOTE:</b> If the confirmation test results are below 0.04, do not submit this report.</p> <p><input type="checkbox"/> The individual refused to submit to testing by:</p> <p><input type="checkbox"/> Failing to submit a specimen of sufficient amount to test, without medical reason</p> <p><input type="checkbox"/> Refusing to submit a specimen</p> <p><input type="checkbox"/> Refusing to cooperate with the specimen collection process or submit to follow-up testing or evaluation</p> <p>4. I followed the alcohol testing procedures required by 49 CFR parts 40 and 382 (or other parts applicable to CDL holders) applicable to the BAT. I conducted the confirmation alcohol test properly, and ensured that the results of the screening and confirmation tests (and additional results, if any) were affixed to the Alcohol Testing form. I forwarded the results to the Designated Employer Representative after:</p> <p><input type="checkbox"/> The individual submitting the sample signed the Alcohol Testing form in Step 4, or</p> <p><input type="checkbox"/> The individual tested refused to sign the Alcohol Testing form in Step 4, and I noted that refusal in the "REMARKS" section of Step 3 of the Alcohol Testing form.</p> <p>Further certify that I have reviewed my records and that the information contained in this certificate is true and correct to the best of my knowledge.</p> <p>Printed Name _____ Signature _____                  Address _____ City _____ State _____ Zip _____</p> <p>By signing below, I, the authorized representative of the Motor Carrier listed above, certify the following:</p> <p>1. The Motor Carrier listed above:</p> <p><input type="checkbox"/> Has an on-hour drug and alcohol testing program that meets the federal requirements of 49 CFR Parts 40 and 382 (or other parts applicable to CDL holders); OR</p> <p><input type="checkbox"/> Is a member of a consortium, as defined in 49 CFR 382.107, that provides drug and alcohol testing that meets the federal requirements of 49 CFR Parts 40 and 382 (or other parts applicable to CDL holders).</p> <p>Name of Consortium _____</p> <p>2. The individual tested is subject to alcohol testing by the Motor Carrier, and was tested for the following reason:</p> <p><input type="checkbox"/> Random <input type="checkbox"/> Reasonable Suspicion <input type="checkbox"/> Post-Accident <input type="checkbox"/> Return to Duty <input type="checkbox"/> Follow-up <input type="checkbox"/> Pre-employment</p> <p>Other _____</p> <p><input type="checkbox"/> Had a 0.04 or more breath alcohol level under 49 CFR Parts 40 and 382 (or other parts applicable to CDL holders) <b>(NOTE: a copy of the federal Alcohol Testing form must be provided, with the screening and confirmation test results included or affixed to the federal Alcohol Testing form); OR</b></p> <p><input type="checkbox"/> Refused to submit to an alcohol test. <b>(NOTE: BAT certification is not required)</b></p> <p>Further certify that I have reviewed the motor carrier's records and that the information contained in this certificate is true and correct to the best of my knowledge.</p> <p>Printed Name of Designated Motor Carrier Representative _____ Telephone Number _____                  Address _____ City _____ State _____ Zip _____</p> <p>Printed Name of Designated Motor Carrier Representative _____ Telephone Number _____                  Address _____ City _____ State _____ Zip _____</p>
<b>C. CERTIFICATE OF MOTOR CARRIER</b>	<p>Printed Name of Designated Motor Carrier Representative _____ Telephone Number _____                  Address _____ City _____ State _____ Zip _____</p>

**INSTRUCTIONS FOR THE COMPLETION OF THE REPORT OF POSITIVE ALCOHOL TEST UNDER TRC 644.252**

**TO THE BREATH ALCOHOL TECHNICIAN (BAT)**

- You must complete parts A & B of this form, including an original signature in Part B.
- You must attach a copy of the Alcohol Testing form with Steps 1 through 4 completed. If the employee refuses to sign in Step 4, you must note that in the REMARKS section of Step 3. The results of the screening test and the confirmation test must be printed on or affixed to the copy of the Alcohol Testing form attached to the Report of Positive Alcohol Test Under TRC 644.252.
- If this report is completed on a self-employed driver, deliver or mail this form, along with the supporting documents, to MCS Section Supervisor, Motor Carrier Bureau, Texas Department of Public Safety, 6200 Guadalupe, MSC #5021, Austin, Texas 78752-4019. **Legible copies only may be sent by facsimile to 512-424-5113.**
- Retain a copy of this form and the completed Alcohol Testing form.
- Please forward your report to the carrier (or to the department if the carrier is an owner-operator) within five days of completing the test results.

**TO THE MOTOR CARRIER**

- Obtain documentation from the BAT:
  - If the specimen tested positive, or was diluted, adulterated or substituted, inform the BAT who verified the positive alcohol test result that he/she must complete and sign the "Certification of Breath Alcohol Technician" section, and provide you with either a copy of the Federal Drug Testing Custody and Control form with Step 6 completed, or a report form on the BAT's letterhead and bearing the BAT's signature showing the result of the test. A report on the BAT's letterhead must contain a statement that the BAT complied with 49 CFR Parts 40 and 382 (or other parts applicable to CDL holders).
  - If the driver refused to provide a specimen, you do not need documentation from the BAT.
- After receiving the completed "Certification of Breath Alcohol Technician" section and supporting documents, you must complete and sign the "Certificate of Motor Carrier" section.
- You must attach a legible copy of the completed federal Alcohol Testing form with the screening and confirmation test results included or affixed.
- Deliver or mail this form and the supporting documentation to: MCS Section Supervisor, Motor Carrier Bureau, Texas Department of Public Safety, 6200 Guadalupe, MSC #5021, Austin, Texas 78752-4019. **Legible copies only may be sent by facsimile to 512-424-5113.**
- Retain a copy of this form and the completed Alcohol Testing form in the Motor Carrier records as required by 49 CFR Parts 40 and 382 (or other parts applicable to CDL holders).
- You must forward this report to the department within ten days of receiving the completed test results.



# MCS-20 Form

### REPORT OF VALID POSITIVE RESULT ON DRUG TEST UNDER TRC 644.252

**A. IDENTIFICATION OF MOTOR CARRIER**

Name of Motor Carrier: \_\_\_\_\_ Date of Test: \_\_\_\_\_

Name of Individual Tested: \_\_\_\_\_ Title: \_\_\_\_\_ CDL Number & State: \_\_\_\_\_ Birthdate: \_\_\_\_\_

By signing below, the Medical Review Officer (MRO) certifies the following:

- I am the MRO for the drug testing program or contractor of the motor carrier listed above.
- I am a licensed physician with knowledge of substance abuse detection.
- The individual is subject to a report of a verifiable result of a drug test under TRC 644.252 because:
  - The individual tested positive for the following substance(s):
    - Marijuana metabolite
    - Amphetamines
    - Cocaine metabolite
    - Phencyclidine (PCP)
  - Obtain a verifiable **POSITIVE RESULT FOR CONTROLLED SUBSTANCE** (specify substance) (documented) that there is clinical evidence, in addition to the urine test, or observation of an open, open, or open container at the level of 1:1000 or above.

OR

The individual refused to submit to testing by:
 

- Submitting an adulterated, diluted, or substituted specimen.
- Refusing to submit a specimen.
- Refusing to cooperate with the specimen collection process or refuse to follow-up testing or evaluation.

I obtained the drug testing program required by 49 CFR Parts 40 and 382 or other state standards (CDL holders applicable to the MRO) followed the chain of custody of the specimen submitted by the individual tested to ensure that it is complete and sufficient to be used, in accordance with the minimum medical requirements for providing drug test results and gave the individual tested an opportunity to discuss the test result prior to making a final decision to verify the positive test result.

I talked directly with the individual tested before writing the test as positive or

I am making an immediate effort to contact the individual tested, including contacting a designated management official of the motor carrier, I was unable to communicate directly with the individual within 10 days of the date I received the test result from the laboratory or

The individual tested was instructed by the designated management official of the motor carrier to contact me and the individual then failed to contact me within 10 days.

The individual tested expressly declined an opportunity to discuss the test result.

**I further certify that I have reviewed my records and that the information contained in this certificate is true and correct to the best of my knowledge.**

Print Name: \_\_\_\_\_ Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

By signing below, I, the authorized representative of the Motor Carrier listed above, certify the following:

I am the Motor Carrier.

I am an owner, driver, or other representative of the Motor Carrier who certifies that the individual tested meets the federal requirements of 49 CFR Parts 40 and 382 or other state standards (CDL holders).

In a number of circumstances, as defined in 49 CFR 382.307, that prohibit drug and alcohol testing that meets the federal requirements of 49 CFR Parts 40 and 382 or other state standards (CDL holders).

**Name or Circumstances:**

Reasonable Suspicion  Post-Accident  Return to Duty  Follow-up  Pre-employment

Other: \_\_\_\_\_ **AND**

I have provided for a post-accident drug and alcohol testing program that meets the federal requirements of 49 CFR Parts 40 and 382 or other state standards (CDL holders). **NOTE:** A copy of the federal drug testing and alcohol testing program or the MRO's report of positive controlled substance test result must be attached, OR

I have not a controlled substance test result (MRO/Certification is not required).

**I further certify that I have reviewed the motor carrier's records and that the information contained in this certificate is true and correct to the best of my knowledge.**

Print Name or Signature of Motor Carrier Representative: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Signature of Domestic Motor Carrier Representative: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Form MCS-20 may only be used in accordance with the MCS-20 Form, Motor Carrier Bureau, Texas Department of Public Safety, 6200 Guadalupe, MSC #9521, Austin, TX 78762-4019, in FAX LEGIBLE form to 512-243-5310. MCS-20-910


### INSTRUCTIONS FOR THE COMPLETION OF THE REPORT OF POSITIVE DRUG TEST UNDER TRC 644.252

**TO THE MEDICAL REVIEW OFFICER (MRO)**

- You must complete parts A & B of this form, including an original signature in Part B.
- You must attach a copy of the Federal Drug Testing Custody and Control form with Step 6 completed, or a report form on your letterhead and bearing your signature showing the result of the test. A report on your letterhead must contain a statement that you complied with 49 CFR Parts 40 and 382 (or other parts applicable to CDL holders) in verifying the results.
- This form is completed on a self-employed driver, deliver or mail this form, along with the supporting documents, to MCS Section Supervisor, Motor Carrier Bureau, Texas Department of Public Safety, 6200 Guadalupe, MSC #9521, Austin, Texas 78762-4019. **Legible copies only may be sent by facsimile to 512-243-5310.**
- Retain a copy of this form and the Federal Drug Testing, Custody and Control form and/or the MRO's report of positive controlled substance result.
- Please forward your report to the carrier (or to the department if the carrier is an owner-operator) within five days of completing the test results.

**TO THE MOTOR CARRIER**

- Obtain documentation from the MRO
  - a. If the specimen tested positive, or was diluted, adulterated or substituted,** return the MRO who verified the positive drug test result that holder must complete and sign the "Certification of Medical Review Officer" section, and provide you with either a copy of the Federal Drug Testing, Custody and Control form with Step 6 completed, or a report form on the MRO's letterhead and bearing the MRO's signature showing the result of the test. A report on the MRO's letterhead must contain a statement that the MRO complied with 49 CFR Parts 40 and 382 (or other parts applicable to CDL holders).
  - b. If the driver refused to provide a specimen,** you do not need documentation from the MRO.
- After receiving the completed "Certification of Medical Review Officer" section and supporting documents, you must complete and sign the "Certificate of Motor Carrier" section.
- You must attach a legible copy of the signed MRO's report or the Federal Drug Testing, Custody and Control form or the MRO's signed report of positive controlled substance result.
- Deliver or mail this form and the supporting documentation to MCS Section Supervisor, Motor Carrier Bureau, Texas Department of Public Safety, 6200 Guadalupe, MSC #9521, Austin, Texas 78762-4019. **Legible copies only may be sent by facsimile to 512-243-5310.**
- Retain a copy of this form and the Federal Drug Testing, Custody and Control form and/or the MRO's report of positive controlled substance result in the Motor Carrier records as required by 49 CFR Parts 40 and 382 (or other parts applicable to CDL holders).
- You must forward this report to the department within ten days of receiving the completed test results.



# MCS-21 Form

### RELEASE OF CDL HOLDER'S REPORTED POSITIVE ALCOHOL OR CONTROLLED SUBSTANCE TEST RESULTS

Use this form to **obtain** the CDL holder's reported positive alcohol or controlled substance test results information.

This form should **ONLY** be used if you wish to **inquire** whether or not a prospective driver (CDL Holder) has had a positive alcohol or controlled substance test result reported to the Texas Department of Public Safety in compliance with state law.

**THIS FORM IS NOT REQUIRED FOR REPORTING A POSITIVE ALCOHOL OR CONTROLLED SUBSTANCE TEST.**

1. This form must be completed in full and include the driver's **original** signature.

Deliver, mail, Email or FAX the completed form to:

**Texas Department of Public Safety  
Motor Carrier Bureau, MSC #9521  
6200 Guadalupe, Building P  
Austin, Texas 78762-4019 / Facsimile: 512-424-5310**

Check here if CDL Holder is requesting results on seat

Email: [MCB.VPR@dps.texas.gov](mailto:MCB.VPR@dps.texas.gov)

★ Print Name of CDL Holder \_\_\_\_\_ Phone Number \_\_\_\_\_

★ Print M/I Address, City, State and Zip Code of CDL Holder \_\_\_\_\_ Social Security # \_\_\_\_\_

Driver License Number of CDL Holder \_\_\_\_\_ State \_\_\_\_\_ Date of Birth \_\_\_\_\_

authorize release of any and all of CDL holder's reported positive alcohol or controlled substance test results reported under Texas state law

★

Print Motor Carrier's Name \_\_\_\_\_ Phone Number \_\_\_\_\_

Print M/I Address, City, State and Zip Code of Motor Carrier \_\_\_\_\_

Signature of Driver \_\_\_\_\_ Date \_\_\_\_\_

★

If you wish to request and receive this information by electronic mail, submit a completed and notarized Electronic Mail Verification Form (MCS-20), available at the following web address: <http://www.tcdps.state.tx.us/forms/index.htm>.

**Driver must provide written consent**



MCS-21 (Rev 6/16) 46



## PROHIBITIONS

- Alcohol Concentration
- On-Duty Use
- Pre-Duty Use
- Use following an Accident
- Refusal to Submit
- Controlled Substance Use
- Controlled Substance Testing

47

## ALCOHOL CONCENTRATION

- ⦿ No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of **0.04** or greater.
- ⦿ No employer having actual knowledge that a driver has an alcohol concentration of **0.04** or greater shall permit the driver to perform or continue to perform safety-sensitive functions.



48



## ON-DUTY USE

- ⦿ No driver shall use alcohol while performing safety-sensitive functions.
- ⦿ No employer having actual knowledge that a driver is using alcohol while performing safety-sensitive functions shall permit the driver to perform or continue to perform safety-sensitive functions.



49

## PRE-DUTY USE

- ⦿ No driver shall perform safety-sensitive functions within **four** hours after using alcohol.
- ⦿ No employer having actual knowledge that a driver has used alcohol within **four** hours shall permit a driver to perform or continue to perform safety-sensitive functions.



50

## USE FOLLOWING AN ACCIDENT

- No driver required to take a post-accident alcohol test shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.



51

## REFUSAL TO SUBMIT

- No driver shall refuse, when required, to submit to a post-accident, random, reasonable suspicion, or a follow-up test.
- No employer shall permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.



52

## CONTROLLED SUBSTANCES USE

- ⦿ No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.



53

## CONTROLLED SUBSTANCES TESTING

- ⦿ No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive or has adulterated or substituted a test specimen for controlled substances.
- ⦿ No employer having actual knowledge that a driver has tested positive or has adulterated or substituted a test specimen for controlled substances shall permit the driver to perform or continue to perform safety-sensitive functions.



54



## **DRUG & ALCOHOL POLICY AND PROCEDURES**

55

## **POLICY & PROCEDURES**

- ⦿ Employer must provide educational materials and policies & procedures with respect to Part 382.
- ⦿ Driver must receive these documents during the pre-employment stage or when transferred into a position requiring driving a commercial motor vehicle.



56

## POLICY & PROCEDURES

- ◎ Material must include:
  - Employer point of contact
  - Drivers who are subject to Part 382
  - Specific driver conduct that is prohibit by Part 382
  - Circumstances for all required testing
  - Procedures for testing, protection & integrity of the testing process, and safeguard of test results
  - What constitutes a refusal
  - Consequences for violation of required test
  - Information concerning the effects of alcohol and drugs use on an individual's health, work, and personal life
- ◎ Certificate of Receipt:
  - Employer shall require driver to sign a statement certifying they received a copy.



57



**PREVIOUS  
EMPLOYER  
INQUIRIES FOR  
DRUG & ALCOHOL**

58

## PREVIOUS EMPLOYER CHECKS

- You must check your driver's DOT drug & alcohol testing history after obtaining written consent.
- If the employee refuses to provide written consent, you must not permit the driver to perform safety sensitive functions.
- You must request information from DOT-regulated employers who employed your driver during any period during the previous two years.



59

## PREVIOUS EMPLOYER CHECKS

- Requested information shall include if a driver had:
  - Alcohol tests with a result of 0.04 or higher alcohol concentration;
  - Verified positive drug tests;
  - Refusals to be tested;
  - Other violations of DOT agency drug and alcohol testing regulations; and
  - Documentation of employee's successful completion of DOT return-to-duty requirements, if employee previously violated a DOT drug and alcohol regulation
- The released information from previous employer must be in written form. Previous employer must maintain written record of information released.



60

## PREVIOUS EMPLOYER CHECKS

- The previous employer must immediately release the requested information.
- Current employer must maintain record of the information received or of good faith efforts you made to obtain the information. Retain this information for three years.



61

## PREVIOUS EMPLOYER CHECKS

### FMCSA Interpretation

#### Question:

When an employer is inquiring about an applicant's previous DOT drug and alcohol test results, is the employer required to send the inquiry via certified mail?

#### Guidance:

- No. Certified mail is not required.
- The employer can make this inquiry through a variety of means, including mail (certified or not), fax, telephone, or email.
- However, the employer must respond via a written response that ensures confidentiality.
- The former employer must respond via a written response that ensures confidentiality.
- The employer should document an attempt or attempts to contact and contacts with previous employers, no matter how they were made, so that it can show a good faith effort to obtain the required information.



62

## PREVIOUS EMPLOYER CHECKS

### FMCSA Interpretation

**Question:**

When a previous employer receives an inquiry from a new employer for drug and alcohol testing information, does the previous employer provide information it may have received from other employers in the past?

**Guidance:**

- As an employer, when you receive an inquiry about a former employee, you must provide all the information in your possession concerning the employee's DOT drug and alcohol tests that occurred in the two years preceding the inquiry.
- This includes information you received about an employee from a former employer.
- It is not a violation of Part 40 if you provide, in addition, information about the employee's DOT drug and alcohol tests obtained from former employers that dates back more than two years.



63



## RECORD KEEPING AND DATA COLLECTION REQUIREMENTS

- Retention Schedules
- Security of Records

64



## RECORD RETENTION SCHEDULE

### FMCSA Interpretation

**Question:**

Many small school districts are affiliated through service units which are, in essence, a coalition of individual districts. Can these school districts have one common confidant for purposes of receiving results and keeping records.

**Guidance:**

Yes. Employers may use agents to maintain the records, as long as they are in a secure location with controlled access.



## RECORD RETENTION SCHEDULE

Schedule	Type of Records
Five Years	Records of alcohol test results indicating an alcohol concentration of 0.02 or greater;
	Records of verified positive drug test results;
	Documentation of refusals to take required alcohol and drug tests;
	Substance Abuse Professional reports; and
	All follow-up tests and schedules for follow-up tests.
Three Years	Information obtained from previous employers concerning drug and alcohol test results of employees.



## RECORD RETENTION SCHEDULE

Schedule	Type of Records
Two Years	Records related to the alcohol and drug collection process. These include, documents related to random selections, reasonable suspicion determinations, and post accident determinations; medical evaluations for insufficient amounts of urine and breath; and supervisor and employee education and training records.
One Year	Records of negative and cancelled drug test results and alcohol test results with a concentration of less than 0.02



67

## WHERE & HOW DO I KEEP MY RECORDS?

- Store testing records in locations with controlled access.
- Only employees with an official “need to know” should have access to these records.



68

***Just remember.....***

If the consortium is not in compliance  
with the regulations, neither are you.



69



## **GENERAL OVERVIEW**

**PROPOSED RULE  
FEBRUARY 2014**

**FINAL RULE  
DECEMBER 2016**

**COMPLIANCE DATE  
JANUARY 2020**

70

## **EXECUTIVE SUMMARY**

The purpose of the Clearinghouse is to maintain records of all drug and alcohol program violations in a central repository and require that employers query the system to determine whether current and prospective employees have incurred a drug or alcohol violation that would prohibit them from performing safety-sensitive functions covered by DOT drug and alcohol testing regulations.

71

## **FEDERALISM**

- Final rule will not change or otherwise affect State drug and alcohol violation reporting requirements.

72

## **FULL QUERY VS LIMITED QUERY**

- Both require driver consent to access information.
- Full Query:
  - Required for pre-employment
  - Optional for annual inquiries
- Limited Query\*:
  - Satisfies annual inquiry requirement

\*An employer that receives a response stating there is information, the employer must obtain specific consent from the driver to conduct a full query that released the content of information.

73

## **DRIVER NOTIFICATIONS**

- FMCSA will notify a driver when information concerning them has been added to, revised, or removed from the Clearinghouse.
- Driver will also be notified when information concerning their record has been released to an employer.

74

## **EMPLOYER ALERT OF POSITIVE TEST RESULTS**

- FMCSA will notify an employer if new information about a driver is entered into the Clearinghouse within 30 days of an employer conducting a query.

75

## **ANNUAL QUERIES - MISC.**

- Batch processing will be accepted.
- Employers are free to chose the time of year that best suits their operational needs.

76

## **DRUG & ALCOHOL POLICY**

- Currently, an employer is required to provide its employee a copy of its drug & alcohol policy.
- Final rule requires the employers, as a part of their educational materials, to notify drivers that drug and alcohol test information will be reported to the Clearinghouse.

77

## **RETENTION PERIOD**

- Records of driver violations will remain in the Clearinghouse for 5 years, except where a driver has failed to complete the return-to-duty process.
- After 5 years, assuming compliance, the records will be archived.

78

## **FEES**

- Driver – No fee to access their own records
- Employer – Will be required to pay a fee.  
However, no fee schedule available at this time.

Note: FMCSA will contract with a third-party to operate and maintain the Clearinghouse. Accordingly, user fees will be determined through the competitive bidding process.