

POLICY SERVICES

ADVISORY

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Policy Advisory Discussion

Federal Motor Carrier Safety Administration (FMCSA) has amended the Federal Motor Carrier Safety Regulations to establish requirements for the Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse). A database under the Agency's administration will contain information about violations of FMCSA's drug and alcohol testing program for the holders of commercial driver's licenses (CDLs). This rule is mandated by the Moving Ahead for Progress in the 21st Century Act (MAP-21). It is intended to improve roadway safety by identifying commercial motor vehicle (CMV) drivers who have committed drug and alcohol violations that render them ineligible to operate a CMV. The effective date was January 4, 2017 with compliance by January 6, 2020. Information maintained in the Clearinghouse will ensure that drivers who commit a drug or alcohol violation while working for another employer, or who attempt to find work with another employer, do not perform safety-sensitive functions until completing the

return-to-duty process. The Clearinghouse thus addresses the situation in which drivers can conceal their drug and alcohol violations merely by moving on to the next job or the next jurisdiction.

Employers and any agents who maintain records for an employer of commercial motor vehicle drivers are required to:

- Provide identification data and prepare specific records to be reported to the Clearinghouse of FMCSA to be incorporated into a database and to query that database (mandatory, beginning in 2023) regarding drivers who are subject to the DOT controlled substance and alcohol testing regulations.
- Make these records available upon request to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

Upon consideration to hire drivers from 2020 to 2023, employers must obtain information from a job applicant that includes the names and addresses of the applicant's employers for the past 3 years, and whether or not the applicant was subject to the FMCSR and to the drug and alcohol testing requirements under 49 CFR part 40 (49 CFR 391.21(b)). District's and employers must then request information from all DOT-regulated employers that employed the driver within the previous 3 years. The information obtained must date back 3 years. By January 2023, employers are to query the Clearinghouse database for the records and do so yearly for all CDL employees driving CMV's. The regulations make it clear that the records required to be sent are to provide the Clearinghouse with a minimum three (3) year record for each licensed CDL in order for employers to be fully informed about a three year employment period for all new and current CDL employees driving CMV's beginning in 2023.

Employers shall inform employees subject to the DOT testing regulations of the records being reported to the Clearinghouse and shared with future employers. Employers may not query the Clearinghouse to determine if records exist for a particular driver without first obtaining that drivers written or electronic consent. Consent information shall be maintained for a period of three (3) years.

The following list of reporting entities and circumstances will provide an overview of the types of records and the needed record-keeping activity that is required. Keep in mind that the District is ultimately responsible for the maintenance of records even if employing an agent to do the drug and alcohol testing and follow-up.

Prospective/Current Employer of CDL Driver.

- An alcohol confirmation test with a concentration of 0.04 or higher.
- Refusal to test (alcohol) as specified in 49 CFR 40.261.
- Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191
- Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance.
- Negative return-to-duty test results (drug and alcohol testing, as applicable)
- Completion of follow-up testing.

Service Agent acting on behalf of Current Employer of CDL Driver.

- An alcohol confirmation test with a concentration of 0.04 or higher.
- Refusal to test (alcohol) as specified in 49 CFR 40.261.
- Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191.
- Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance.
- Negative return-to-duty test results (drug and alcohol testing, as applicable)
- Completion of follow-up testing.

Medical Review Officer (MRO)

- Verified positive, adulterated, or substituted drug test result.
- Refusal to test (drug) requiring a determination by the MRO as specified in 49 CFR 40.191.

Substance Abuse Professionals (SAP)

- Identification of driver and date the initial assessment was initiated.
- Successful completion of treatment and/or education and the determination of eligibility for return-to-duty testing.

Identification

For each alcohol or controlled substance test performed, the employer shall provide the following information, which must be recorded as follows:

- The driver’s commercial driver’s license number and State of issuance.
- The employer’s name and other identifying information required.

FMCSA may collect a reasonable fee from entities required to query the Clearinghouse. Exception: No driver may be required to pay a fee to access his or her own information in the Clearinghouse.

Policy Advisory 204 - EEAEA – Bus Driver Requirements, Training, and Responsibilities. Policy Services noted the revision of the rules and added a statement giving the CDL driver notice of his duty to notify the District employer of violations of alcohol and controlled substances rules prior to performing a safety-sensitive function. Also added to EEAEA was the statement limiting performance of a safety sensitive function if the CDL holder refused to grant consent to receive access to a specific record of any of the events indicated. It should be noted that the details of such inquiry along with the form and format to be reported are not included in the policy. The control of these matters is subject to the Clearinghouse application of the rules and should be accessed through FMCSA.

Policy Advisory No. 205 - EEAEAA - Drug and Alcohol Testing of Transportation Employees. The first addition to this policy informs the district of their obligation to gather, maintain and report certain personal information to officials and agencies by the close of the third business day following the date on which they obtained that information beginning in January of 2020. This appears to be in order that the Clearinghouse will take over the duty of supplying this information from one source by the 2023 date at which time the District is required to use the Clearinghouse source. Also indicated in the addition is the required registration to receive Clearinghouse information and the acknowledgement that the District or employer will not allow, require, authorize or permit operation of a commercial motor vehicle by a CDL employee during a period following one of the events reported until they have completed and are in compliance with the return-to duty requirements.

The advisories do not contain the entire content of the requirements of the Omnibus Act and the revised rules, nor the details necessary to the reporting. In some cases, the rule is cited for implementation and the District, employer or agent of either must read the actual rule. This is because of the detail of the directions given for implementation or compliance. Those responsible for the reporting should adequately review the rules discussed in the advisories. For that purpose the rules for 49 CFR Parts 382, 383, 384, and 391 are found in the legal materials as linked citations on the internet following the text of the policies, regulations and exhibits. The length of the regulations prohibits providing a PDF copy.

Materials of a legal nature in support of this advisory may be found following the text of the policies or at the websites cited. If you have any questions, or requests call Policy Services at (505) 469-0193 or E-mail Dr. Donn Williams, Policy Services Director at [nmsbapolicy@cox.net].

This Material is written for information only and is not intended as legal advice. Please consult your attorney if legal explanations are needed.

Advisory 204

**BUS DRIVER REQUIREMENTS, TRAINING,
AND RESPONSIBILITIES**

Bus drivers and support staff employed by the District or employed by contractors who provide transportation services to the District shall comply with applicable provisions of the Commercial Motor Vehicle Safety Act of 1986 as revised and all applicable requirements of the state of New Mexico. Additionally, bus drivers and bus support personnel, where appropriate, shall perform their duties in a safe and efficient manner in accord with federal, state, local statutes and regulations, department regulations, and District policies. Regulations 6.41.4.11 NMAC through 6.41.4.13 NMAC are made a part of this policy by reference as a means of emphasizing safety, records requirements, and safety equipment as they apply to all drivers and assistants.

Bus drivers and substitutes shall also maintain and provide their employer with a copy of the following:

- a current commercial driver's license (CDL) with appropriate class and endorsements;
- a current Department of Transportation (DOT) medical examiner's certificate in compliance with federal and state CDL licensing requirements;
- a driving record obtained through the New Mexico motor vehicle division or the national driver register or other states' motor vehicle division and printed annually; and
- a current first aid and cardiopulmonary resuscitation (CPR) certificate which has been obtained from a course approved by the department.

The holder of a CDL who has violated an alcohol and controlled substance prohibition must notify in writing all current employers of such violations (if employer did or will not administer a test) before the end of the business day following the day the employee received notice and before performing a safety-sensitive function. [49 CFR 382.415].

School bus assistants and substitute assistants shall maintain and provide their employer with a copy of the following:

- a current first aid and CPR certificate pursuant to the requirements in Paragraph A of 6.41.4.13 NMAC; and

- a physical examination renewed every twenty-four (24) months from the date of the last examination or before as specified by a licensed medical professional.

Required Consent

No employer may permit a driver to perform a safety-sensitive function if the driver refuses to grant the consent required. In order for the District to obtain access to the driver's records from previous employers and the Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse), a database of the Federal Motor Carrier Safety Administration (FMCSA), for employment and verification, the driver applicant or employee must complete a notarized consent form and submit an electronic consent to the Clearinghouse granting the District access to the specific records identified below:

- A verified positive, adulterated, or substituted controlled substances test result;
- An alcohol confirmation test with a concentration of 0.04 or higher;
- A refusal to submit to a test in violation of § 382.211;
- An employer's report of actual knowledge, as defined at § 382.107, of:
 - On duty alcohol use pursuant to § 382.205;
 - Pre-duty alcohol use pursuant to § 382.207;
 - Alcohol use following an accident pursuant to § 382.209; and
 - Controlled substance use pursuant to § 382.213;
- A substance abuse professionals (SAP) report of the successful completion of the return-to-duty process;
- A negative return-to-duty test; and
- An employer's report of completion of follow-up testing.

A driver granting consent under this section grants consent for the FMCSA to release information to an employer in accordance with § 382.701(c).

The District may obtain the individual driver's consent to conduct a limited query to satisfy the annual query requirement which will tell the District whether there is information about the individual driver in the Clearinghouse, but such consent will not release that information to the employer. [49 CFR 382.701]

In-service Training: To remain qualified, school bus drivers, substitute school bus drivers, school bus assistants, and substitute school bus assistants shall complete a total of eight (8) hours per semester of in-service training that has been approved by the transportation administrator. Persons who do not complete the required hours of in-service training are disqualified from duty until those hours of in-service training are completed.

Adopted: date of manual adoption

LEGAL REF.: 49 C.F.R. Part 40
49 C.F.R. Part 382
6.41.4.11 NMAC
6.41.4.12 NMAC
6.41.4.13 NMAC

CROSS REF.: EE - Transportation Services
EEA - Student Transportation
EEAE - Bus Safety Program
EEAEAA - Drug and Alcohol Testing of Transportation Employees

Advisory 205

**DRUG AND ALCOHOL TESTING OF
TRANSPORTATION EMPLOYEES**

The District is committed to the establishment of a drug and alcohol misuse prevention program that meets or exceeds all applicable requirements of the Omnibus Transportation Employee Testing Act of 1991 (Omnibus Act). All statements in this document will be interpreted so as to conform to the Department of Transportation (DOT) rules. The District, and each service agent who maintains records for an employer of a driver with a CDL, will make available copies of all results for DOT testing and other pertinent information gathered under the Omnibus Act to any officials or agencies with regulatory authority over the employer or any of its drivers. The following personal information shall be reported to the Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse), a database of the Federal Motor Carrier Safety Administration (FMCSA), in accordance with 49 CFR 382.601 and 382.705:

- A verified positive, adulterated, or substituted controlled substances test result;
- An alcohol confirmation test with a concentration of 0.04 or higher;
- A refusal to submit to a test in violation of § 382.211;
- An employer's report of actual knowledge, as defined at § 382.107, of:
 - On duty alcohol use pursuant to § 382.205;
 - Pre-duty alcohol use pursuant to § 382.207;
 - Alcohol use following an accident pursuant to § 382.209; and
 - Controlled substance use pursuant to § 382.213;
- A substance abuse professionals (SAP) report of the successful completion of the return-to-duty process;
- A negative return-to-duty test; and
- An employer's report of completion of follow-up testing.

This information and documentation as required by 49 CFR 382.705 shall be provided by the District or the service agent to the Clearinghouse by the close of the

third business day following the date on which they obtained that information beginning in January 2020. To submit or receive information from the Clearinghouse a party must register in accordance with [49 CFR 382.707.]

Each employee of the District who is required to have a commercial driver's license (CDL) for performance of job functions shall not be allowed, required, permitted or authorized to operate a commercial motor vehicle during any period following ~~be prohibited from one of these events~~ :

- The driver receives a positive, adulterated, or substituted drug test result. [49 CFR 382.217]
- Reporting for duty or remaining on duty to perform safety-sensitive functions as defined in 49 CFR 382.107 while having an alcohol concentration of 0.04 or greater. [49 CFR 382.201]
- Being on duty or operating a commercial motor vehicle (school bus) while the driver possesses alcohol, unless the alcohol is manifested and transported as part of a shipment. This includes the possession of medicines containing alcohol (prescription or over-the-counter), unless the packaging seal is unbroken. [49 CFR 382.204]
- Using alcohol while performing safety-sensitive functions. [49 CFR 382.205]
- Performing safety-sensitive functions within eight (8) hours after using alcohol. [49 CFR 382.207]
- Using alcohol within four (4) hours following an accident or prior to undergoing a postaccident alcohol test, whichever comes first. [49 CFR 382.299]
- Refusing to submit to an alcohol or controlled substance test as required under postaccident, random, reasonable suspicion or follow-up testing requirements in DOT rules. [49 CFR 382.211]
- Reporting for duty or remaining on duty, requiring the performance of safety-sensitive functions, when the driver uses any controlled substance, except when the use is pursuant to the written instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle. [49 CFR 382.213]
- Reporting for duty, remaining on duty, or performing a safety-sensitive function if the driver tests positive for controlled substances. [49 CFR 382.215]

- Used a controlled substance. [49 CFR 382.217]

A driver will notify in writing all current employers of such events (if employer will or did not administer a test) before the end of the business day following the day the employee received notice and before performing a safety-sensitive function. [49 CFR 382.415]

A driver will inform the supervising administrator of any therapeutic drug use. [49 CFR 382.213]

Drugs as used in this policy refers to controlled substances as covered by the Omnibus Act and to drugs circumscribed by the New Mexico Revised Statutes.

All drivers shall be subject to preemployment/preduty drug and alcohol testing, including reasonable suspicion, random, and postaccident testing in accord with the regulations of the Omnibus Act. If applicable, return to duty and follow up testing shall be required in accord with regulations of the Omnibus Act. [49 CFR 382.301 *et seq.*] All testing shall include driver identification in accordance with [49 CFR 382.123.]

All offers of employment with the District for drivers will be made contingent upon preemployment background information and test results. Employers shall request information from previous employers and all DOT regulated employers of the past 3 years for related information of the past 3 years from January 6, 2020 but must use the Drug and Alcohol Clearinghouse in accordance with [49 CFR 382.701] as of January 6, 2023. If an employee has not completed all follow-up tests, district must request the follow-up testing plan directly from the previous employer per Section 40.259b)(5). An applicant testing positive for alcohol or controlled substances will not be employed. [49 CFR 382.505]

Each driver who engages in the conduct prohibited herein shall:

- Be advised of resources available to the driver in evaluating and resolving problems associated with drug or alcohol use, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.
- Be evaluated by a substance abuse professional, who shall determine what assistance, if any, the employee needs to resolve drug or alcohol problems.
- Before return to duty in a safety-sensitive position, undergo a return-to-duty alcohol test with a result indicating less than 0.02 or a substance test with a verified negative result.

- If identified as needing assistance by a substance abuse professional, be evaluated by a substance abuse professional to determine if that driver has properly followed any rehabilitation program prescribed, and be subject to unannounced follow-up tests following return to duty in accord with federal regulations. [49 CFR 382.605]

The District shall assume the cost for the initial evaluation by a substance abuse professional to determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use. Evaluation and rehabilitation of the employee, if the employee is allowed to return to work in any position, shall be in accordance with 49 CFR 382.605 and by a substance abuse professional paid by the employee.

The Superintendent is responsible for supervision of the District drug and alcohol misuse prevention program. The Superintendent will develop procedures for the implementation of the program in compliance with the applicable provisions and regulations of the Omnibus Transportation Employee Testing Act of 1991.

Adopted: date of manual adoption

LEGAL REF.: 49 U.S.C. 31306, (Omnibus Transportation Employee Testing Act of 1991)
49 C.F.R. Part 40
49 C.F.R. Part 382
49 C.F.R. Part 395

CROSS REF.: GBEC - Drug-Free Workplace
GBECA - Nonmedical Use or Abuse of Drugs or Alcohol
EEAEA - Bus Driver Requirements, Training, and Responsibilities

REGULATION**REGULATION****DRUG AND ALCOHOL TESTING OF
TRANSPORTATION EMPLOYEES****Circumstances Under Which Tests
for Drivers Are to Be Given**

All information obtained in the course of testing of drivers shall be protected as confidential medical information. Except as required by law or expressly authorized or required in 49 CFR 382.405 as amended (2017), no information that is to be maintained pursuant to 49 CFR 382.401 shall be released.

Random:

- A minimum of fifty percent (50%) of drivers shall be tested annually for drugs and twenty-five percent (25%) of drivers shall be tested annually for alcohol, subject to the Federal Highway Administration's administrator raising or lowering the annual percentage rate in accordance with regulations. [49 CFR 382.305] Random testing selection shall be as follows:
 - Employees are to be placed in and remain in a pool for random selection.
 - A valid random selection procedure will be used.
 - Tests will be given at least once each quarter.
 - Dates of testing will not be announced.
- Random drug and alcohol testing may be combined. For example, when testing at fifty percent (50%) drug random rate and twenty-five percent (25%) alcohol random rate, half of the randomly selected drivers chosen for testing could be tested for both drugs and alcohol, while the rest could be tested only for drugs.

Postaccident:

- Drivers are required to submit to drug and alcohol testing as soon as possible following a "Department of Transportation (DOT) accident" that involves the loss of human life or for which the driver receives a citation under state or local law for a moving traffic violation arising from the accident. [49 CFR 382.303]

- A *DOT accident* is defined as an occurrence involving a commercial motor vehicle operating on a public road that results in:
 - A fatality; *or*
 - Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; *or*
 - One (1) or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle. [49 CFR 390.5]
- If a driver is seriously injured and cannot submit to testing at the time of the accident, the driver shall provide the necessary authorization for obtaining hospital reports and other documents that may indicate whether there were any drugs or alcohol used by the driver prior to the accident. [49 CFR 382.303]
- A driver who is subject to postaccident testing shall remain readily available for such testing or may be deemed by the District to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical treatment or to prohibit the driver from leaving the scene of an accident for a period necessary to obtain assistance in responding to the accident, or to obtain necessary medical care. [49 CFR 382.303]
- No driver required to take a postaccident alcohol test shall use alcohol for eight (8) hours following the accident, or until the driver undergoes a postaccident alcohol test, whichever occurs first. [49 CFR 382.303]
- The following actions are to be taken in a postaccident testing situation:
 - Treat injuries.
 - Work with law enforcement officials.
 - Explain the need for testing.
 - Obtain the driver's permission for testing, if possible.
 - Work with the medical facility to obtain the necessary documents and test information.
 - Collect specimens promptly.
 - Document events.

The results of a breath or blood test for the use of alcohol or a urine test for the use of drugs conducted by federal, state, or local officials having independent authority

for the test shall be considered to meet the requirements for postaccident testing if the results are obtained by the School District. [49 CFR 382.305]

Reasonable suspicion:

- *Reasonable suspicion* is defined to mean that the District believes the behavior, speech, body odor, or appearance of a driver while on duty are indicative of the use of alcohol and/or controlled substances. The conduct must be witnessed by a supervisor or District official trained in the detection of probable alcohol and drug use by observing indicators in a person's appearance, behavior, speech, and performance, in accordance with 49 CFR 382.603. If it is at all possible, the witness should not conduct the alcohol test, in order to prevent the introduction of bias to the testing procedure.
- Alcohol testing is authorized only if the observations are made during, just before performing, or just after performing a safety-sensitive function. A written record shall be made of the observations leading to an alcohol and/or controlled substance test. This record is to be signed by the supervisor who made the observations.
- If a reasonable suspicion alcohol test is not administered within two (2) hours following the observations, the witness shall prepare and maintain on file a record stating the reasons the alcohol test was not administered promptly. In addition, if not administered within eight (8) hours, all attempts to administer the test shall cease. A record shall be prepared and maintained stating why the alcohol test was not administered. [49 CFR 382.307]
- Reasonable suspicion testing should include the following considerations:
 - Focus on safety.
 - Verify reasonable suspicion if possible.
 - Observe the employee's appearance, behavior, speech, and performance.
 - Inform the employee in private of any suspicion.
 - Inquire in private about any observations or suspicions.
 - Review the findings.
 - Upon concluding that reasonable suspicion exists, transport the employee to a testing site.
 - Document events.

Return-to-duty testing:

- A driver who has been prohibited from performing a safety-sensitive function after engaging in conduct regarding alcohol misuse or controlled substance use prohibited by U.S. Department of Transportation regulations, and before returning to duty, shall undergo a return-to-duty test, which must indicate a concentration of less than 0.02 for breath alcohol and/or a negative result for controlled substances. [49 CFR 382.309 and 382.605(C)]
- When a driver has been determined to be in need of assistance in resolving problems associated with alcohol misuse and/or controlled substance use, the driver will be subject to unannounced follow-up alcohol and/or controlled substance testing. The driver will be subject to a minimum of six (6) follow-up tests in the first twelve (12) months. The follow-up testing period shall not exceed sixty (60) months. Follow-up testing for alcohol shall be administered only when the driver is performing, just before performing, or just after performing a safety-sensitive function. [49 CFR 382.311 and 382.605(C)]

Referral:

- Each driver who engages in conduct prohibited by 49 CFR 382.201 *et seq.* shall be evaluated by a substance abuse professional, who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substance use. [49 CFR 382.605]

Driver Training

A copy of materials explaining the requirements of the Omnibus Act and the District's policies and procedures with respect to meeting such requirements will be distributed to each driver prior to the start of alcohol and controlled substance testing and to each driver hired or subsequently transferred into a driving position. The District shall provide written notice to representatives of employee organizations of the availability of this information. [49 CFR 382.601]

These materials shall include detailed discussions of at least the following:

- The identity of the person designated to answer employee questions about the materials.
- The categories of employees subject to this part of the regulation.
- Sufficient information about safety-sensitive functions performed by such drivers to make clear what part of the work day a driver must be in compliance with the rule.
- Specific information concerning driver conduct that is prohibited by the rule.

- The circumstances under which a driver will be tested for alcohol and/or controlled substances by rule.
- The procedures that will be used to test for the presence of alcohol and controlled substances, to protect the driver and the integrity of the testing processes, to safeguard the validity of the test results, and to ensure that the results are attributed to the correct driver.
- The requirement that the employee submit to alcohol and controlled substance tests administered in accord with Omnibus Act regulations.
- An explanation of what constitutes a refusal to submit to an alcohol or controlled substance test and the attendant consequences.
- The consequences for drivers found to have violated the rule, including requirements for removal from duty.
- Consequences for a driver having a concentration of 0.02 but less than 0.04 in a breath alcohol test.
- Information concerning the effects of alcohol and controlled substance use on an individual's health, work, and personal life; signs and symptoms of an alcohol or controlled substance problem (the driver or a co-worker); and available methods of intervention, including confrontation and referral. [49 CFR 382.601]

Policies, regulations, and consequences based on the District's independent authority outside of the Omnibus Act shall be presented and clearly and obviously described as being based on independent authority [49 CFR 382.601]. All such references shall be placed in bold within the document and shall contain applicable statutory citations.

Each driver must provide a signed receipt for the materials. [49 CFR 382.401(c)(5)(iii)]. Written notice of the availability of this information shall be provided to representatives of employee organizations. [49 CFR 382.601(a)(2)]

Supervisor Training

Persons designated to determine whether reasonable suspicion exists to require a driver to undergo reasonable-suspicion testing shall receive at least sixty (60) minutes of training on alcohol misuse and at least an additional sixty (60) minutes of training on controlled substance use. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. [49 CFR 382.603]

EXHIBIT**EXHIBIT****DRUG AND ALCOHOL TESTING OF
TRANSPORTATION EMPLOYEES****RECORDS RETENTION**

The District shall maintain records of its alcohol misuse and prevention program in a secure location with controlled access. The records are to be kept as indicated below.

How long is the employer required to keep records? [49 CFR 382.401(c)(1)]

- *Five years:*
 - Records of alcohol test results showing concentrations of 0.02 or more.
 - Records of driver-verified positive controlled substance tests.
 - Documentation of refusals to take required tests.
 - Calibration documentation.
 - Driver evaluation and referrals.
 - A copy of each annual calendar year summary.
- *Two years:*
 - Records related to the alcohol and controlled substance collection process and training.
- *One year:*
 - Records of negative and canceled drug test results and alcohol test results with concentrations of less than 0.02.

What types of records must be kept?

- *Records relating to the collection process, as follows[49 CFR 302.401(c)(1)]:*
 - Collection logbook, if used.

- Documents relating to the random selection process.
 - Calibration documents for evidential breath testing devices.
 - Documentation of breath alcohol technician training.
 - Documents regarding decisions to administer reasonable-suspicion tests.
 - Documents regarding decisions of postaccident tests.
 - Documents verifying existence of a medical explanation of the inability of a driver to provide an adequate breath or urine specimen for testing.
 - Consolidated annual calendar year summaries as required by 49 CFR 382.403.
- *Records relating to driver's test results [49 CFR 382.401(c)(2)]:*
 - Employer's copy of alcohol test forms, including the results of the test.
 - Employer's copy of drug test chain of custody and control form.
 - Documents sent by the medical review officer (MRO) to the employer, including those required by 49 CFR 382.407(a).
 - Documents related to refusal by any driver to submit to a drug or alcohol test required by the rules.
 - Documents presented by a driver to dispute the results of an alcohol or substance abuse test required by the rules.
- *Records related to other violations.*
- *Records related to evaluations:*
 - Records pertaining to a determination by a substance abuse professional (SAP) concerning a driver's need for assistance.
 - Records concerning a driver's compliance with recommendations of the SAP.
- *Records relating to education and training:*
 - Materials on alcohol misuse and drug use awareness, including a copy of the employer's policy on both.
 - Documentation of compliance with the requirements of 49 CFR 382.601, including the driver's signed receipt for materials.

- Documentation of training provided to supervisors for determining the need for reasonable-suspicion testing for alcohol misuse or use of controlled substances.
- Certification that any training that has been conducted complies with the requirements for such training.
- *Records relating to drug testing:*
 - Agreements with the collection site facilities, laboratories, medical review officers, and consortia.
 - Names and positions of officials and their roles in the employer's alcohol and controlled substance testing program.
 - Monthly laboratory statistical summaries of urinalysis required by 49 CFR 40.29(g)(6).
 - The employer's drug and alcohol testing policy and procedures.

How must these records be reported?

- All records must be kept in prescribed form and be supplied to DOT when requested. The District will be notified whether to submit the records. [49 CFR 382.403(b)]

What happens if records are not kept properly?

- Penalties can be severe; for example, just an error in paperwork can mean a fine of up to five hundred dollars (\$500) for each violation. Other violations can be penalized as high as ten thousand dollars (\$10,000) per occurrence and loss of federal funding. [49 U.S.C. Section 521(b)]

Where are records to be located?

- All records required shall be maintained as required by 49 CFR 390.31 and shall be made available for inspection at the employer's principle place of business within two (2) business days after a request by an authorized representative of the Federal Highway Administration. [49 CFR 382.401(d)]

What summary records are required?

- The District must prepare by March 15th of each year, and maintain, an annual calendar year summary of the results of all controlled substance and alcohol testing performed during the previous calendar year.

- Each summary that contains verified positive controlled substance test results and alcohol screening tests with concentrations of .02 or greater or any other violations or alcohol misuse must include the following elements:
 - The number of drivers subject to 49 CFR 382.
 - The number of drivers subject to testing under the alcohol misuse or drug use rules of more than one DOT Agency - identified by each Agency.
 - The number of urine specimens collected, by type of test (e.g., random, reasonable suspicion, etc.).
 - The number of positives verified by an MRO for type of test and type of drug.
 - The number of negative drug tests verified by an MRO, by type of test.
 - The number of persons denied positions as drivers following preemployment verified positive drug testing and/or alcohol testing with concentrations of 0.04 or greater.
 - The number of drivers with MRO-verified positive tests for multiple controlled substances.
 - The number of drivers who refused to submit to alcohol or drug tests required by 49 CFR 382.
 - The number of supervisors who have received required alcohol training during the reporting period.
 - The number of supervisors who have received required controlled substances training during the reporting period.
 - The number of screening alcohol tests, by type of test.
 - The number of confirmation alcohol tests, by type of test.
 - The number of confirmation alcohol tests with concentrations of 0.02 or greater but less than 0.04, by type of test.
 - The number of confirmation alcohol tests with concentrations of 0.04 or greater, by type of test.
 - The number of drivers returned to duty, after complying with a SAP's recommendation in this reporting period, who had previously had verified positive drug test results or engaged in prohibited alcohol misuse.

- The number of drivers who were administered drug and alcohol tests at the same time with both verified positive drug test results and alcohol test results with concentrations greater than 0.04.
 - The number of drivers who were found to have violated any nontesting prohibition of 49 CFR 382.403(b) and any action taken in response to the violation.
- Each employer with an annual calendar year summary that contains only negative drug test results, alcohol screening test results of less than 0.02, and no other violations may prepare and submit either a standard summary form with information as listed above or an "EZ" report form. The abbreviated "EZ" form requires selected information from the list above. [49 CFR 382.403]

Who may have access to the records?

- The covered employee, to the employee's records, upon written request.
- The employer both current and future.
- The Secretary of Transportation, upon request.
- The FMSCA Clearinghouse.
- Any DOT agency, upon request.
- Any state or local official with regulatory authority over the employee, upon request.
- Any person or employer, upon the employee's written request.
- National Transportation Safety Board may review postaccident test information upon request and as a part of an accident investigation. [49 CFR 382.405]

Are the records relating to the drug and alcohol testing program confidential?

- Yes; therefore, they are not subject to disclosure under the Inspection of Public Records, with the possible exception of the Annual Calendar Year Summary once released to the DOT. [49 CFR 382.405]

RELEVANT STATUTES, RULES AND CITATIONS

Found below are the cited parts of 49 CFR in URL format linking to the latest iteration on the Internet:

Part 382

<https://www.ecfr.gov/cgi-bin/text-idx?SID=1844fd135810024eeca1eb32a2836367&mc=true&node=pt49.5.382&rgn=div5>

Part 383

<https://www.ecfr.gov/cgi-bin/text-idx?SID=1844fd135810024eeca1eb32a2836367&mc=true&node=pt49.5.383&rgn=div5>

Part 384

<https://www.ecfr.gov/cgi-bin/text-idx?SID=1844fd135810024eeca1eb32a2836367&mc=true&node=pt49.5.384&rgn=div5>

Part 391

<https://www.ecfr.gov/cgi-bin/text-idx?SID=1844fd135810024eeca1eb32a2836367&mc=true&node=pt49.5.391&rgn=div5>