

Definitions of FMCSA Terms:

When implementing and interpreting the drug and alcohol policies and procedures required by the FMCSA as well as the policies and procedures required by the company, the following definitions apply:

Actual knowledge means actual knowledge by an employer that a driver has used alcohol or controlled substances based on the employer's direct observation of the driver, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or a controlled substance, or a driver's admission of alcohol or controlled substance use under the provisions of Sec. 382.121. Direct observation as used in this definition means observation of alcohol or controlled substance use and does not include observation of driver behavior or physical characteristics sufficient to warrant reasonable suspicion testing under Sec. 382.307

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.

Alcohol screening device (ASD). A breath or saliva device, other than an evidential breath testing device (EBT), that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.

Alcohol use means the consumption of any beverage, liquid mixture, or preparation, including any medication, containing alcohol.

Breath Alcohol Technician (or BAT). An individual who instructs and assists individuals in the alcohol testing process, and operates an evidential breath testing device (EBT).

CCF means custody and control form.

CFR means Code of Federal Regulations.

Collection site. A place designated by the company, where individuals present themselves for the purpose of providing a urine specimen for a drug test.

Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- Has a gross combination weight rating of 26,001 or more pounds (11,794 or more kilograms) inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds (4,536 kilograms); or
- Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds); or
- Is designed to transport 16 or more passengers, including the driver; or
- Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, subpart F).

Confirmation (or confirmatory) drug test means a second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite.

Confirmation (or confirmatory) validity test means a second test performed on a urine specimen to further support a validity test result.

Confirmed drug test means a confirmation test result received by an MRO from a laboratory.

Consortium/Third-party administrator (C/TPA) is a service agent that provides or coordinates the provision of a variety of drug and alcohol testing services for the company. C/TPAs typically perform administrative tasks concerning the operation of the company's drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members. C/TPAs are not "employers."

Controlled substances mean those substances identified in 49 CFR, Section 40.85.

In accordance with FMCSA rules, urinalyses will be conducted to detect the presence of the following substances:

- * Marijuana
- * Cocaine
- * Opiates
- * Amphetamines
- * Phencyclidine (PCP).

Detection levels requiring a determination of a positive result shall be in accordance with the guidelines adopted by the FMCSA in accordance with the requirements established in 49 CFR, Section 40.87.

Designated employer representative (DER) is an individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove drivers from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the company. Service agents cannot serve as DERs.

Disabling damage means damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

- Inclusions. Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.
- Exclusions.
- Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
- Tire disablement without other damage even if no spare tire is available.
- Headlight or taillight damage.
- Damage to turn signals, horn, or windshield wipers which make them inoperative.

Driver means any person who operates a commercial motor vehicle. This includes, but is not limited to: full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to an employer or who operates a commercial motor vehicle at the direction of or with the consent of an employer.

DOT means Department of Transportation.

Drug means any substance (other than alcohol) that is a controlled substance as defined in this policy and 49 CFR Part 40.

Evidential breath testing device (EBT). A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the 0.02 and 0.04 alcohol concentrations, placed on NHTSA's Conforming Products List (CPL) for "Evidential Breath Measurement Devices" and identified on the CPL as conforming with the model specifications available from NHTSA's Traffic Safety Program.

FMCSA means Federal Motor Carrier Safety Administration, U.S. Department of Transportation.

Licensed medical practitioner means a person who is licensed, certified, and/or registered, in accordance with applicable federal, state, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

Medical Review Officer (MRO). A person who is a licensed physician (Doctor of Medicine or Osteopathy) and who is responsible for receiving and reviewing laboratory results generated by the company's drug testing program and evaluating medical explanations for certain drug test results.

Performing (a safety-sensitive function) means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

Prescription Medications means the use (by a driver) of legally prescribed medications issued by a licensed health care professional familiar with the driver's work related responsibilities.

Refuse to submit (to an alcohol or controlled substances test) means that a driver:

- Fails to appear for any test (except pre-employment) within a reasonable time, as determined by the company, consistent with applicable DOT regulations, after being directed to do so by the company. This includes the failure of a driver (including an owner-operator) to appear for a test when called by a C/TPA;
- Fails to remain at the testing site until the testing is complete (except pre-employment if the driver leaves before the testing process begins);
- Fails to provide a urine specimen for any DOT required drug test (except pre-employment if the driver leaves before the testing process begins);
- 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 provision of the specimen;
- Fails 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;
- Fails or declines to take a second test the employer or collector has directed the driver to take;
- Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER (In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment);
- Fails to cooperate with any part of the testing process; or
- Is reported by the MRO as having a verified adulterated or substituted test result.

Safety-sensitive function means 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 include:

- 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 company;
- all time inspecting equipment as required by Sections. 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- all time spent at the driving controls of a commercial motor vehicle in operation;
- 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 Sec. 393.76);
- 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
- all time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Screening test (or initial test) means:

- In drug testing, a test to eliminate "negative" urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs.
- In alcohol testing, an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in a breath or saliva specimen.

Screening test technician (STT). A person who instructs and assists employees in the alcohol testing process and operates an alcohol screening device (ASD).

Stand-down means the practice of temporarily removing a driver from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive drug test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test results.

Substance abuse professional (SAP). A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare. A SAP must be:

- * a licensed physician (Doctor of Medicine or Osteopathy);

- * a licensed or certified social worker;
- * a licensed or certified psychologist;
- * a licensed or certified employee assistance professional; or
- * a drug and alcohol counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC).

What is a service agent?

A service agent is any person or entity, other than an employee of the employer, who provides services specified under this part to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet the qualifications set forth in applicable sections of this part. Service agents are not employers for purposes of this part.

Service agents can provide a variety of services, including random selections, breath alcohol testing, evaluations, etc. The roles and responsibilities of service agents are described in Subpart Q. The motor carrier is responsible for Part 40 compliance even if it uses a service agent! As stated in §40.15(c): "Your good faith use of a service agent is not a defense in an enforcement action initiated by a DOT agency in which your alleged noncompliance with this part or a DOT agency drug and alcohol regulation may have resulted from the service agent's conduct."

What is a Consortium/Third-Party Administrator (C/TPA)?

A Consortium/Third-Party Administrator (C/TPA) means a service agent that provides or coordinates one or more drug and/or alcohol testing services for Department of Transportation (DOT)-regulated employers.

C/TPAs typically provide or coordinate the provision of a number of such services. C/TPAs perform administrative tasks concerning the operation of employers' drug and alcohol testing programs. This term (C/TPA) includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members. C/TPAs are not "employers" for the purpose of Part 382 and Part 40 regulations.

What is a Designated Employer Representative (DER)?

The Designated Employer Representative, or DER, is an employee authorized to take immediate action to remove employees from (or have them removed from) safety-sensitive duties and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer. Only an

employee (or the employer directly) may act as a DER. This is one of the only roles that a service agent can never perform.

What is a Medical Review Officer (MRO)?

A medical review officer (MRO) is defined as "a person who is a licensed physician (Doctor of Medicine or Osteopathy) and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results."

The MRO acts as an independent and impartial "gatekeeper." He/she is an advocate for the accuracy and integrity of the drug testing process. The MRO's duties include:

- Providing a quality assurance review of the drug testing process;
- Determining whether there is a legitimate medical explanation for confirmed positive, adulterated, substituted, and invalid drug test results from the laboratory;
- Investigating and correcting problems where possible;
- Ensuring the timely flow of test results and other information to employers; and
- Protecting the confidentiality of drug testing information.

An MRO's medical review of an employee's drug test results does not constitute an established doctor-patient relationship.

What is a Substance Abuse Professional (SAP)?

A substance abuse professional (SAP) is defined as "a person who evaluates employees who have violated Department of Transportation (DOT) drug and alcohol regulations and makes recommendations concerning education, treatment, follow-up testing and aftercare." An individual must have certain credentials, knowledge, and training to act as a SAP.

He/she must be a:

- Licensed physician (Doctor of Medicine or Osteopathy);
- Licensed or certified social worker;
- Licensed or certified psychologist;
- Licensed or certified employee assistance professional; or
- Drug or alcohol counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC).

A SAP must have knowledge and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders. He/she must also know the Part 40 regulations, other applicable DOT agency regulations, and the DOT's SAP Guidelines.

What is public interest exclusion (PIE)?

The purpose of the public interest exclusion (PIE) is to protect transportation employers and employees from serious noncompliance with DOT drug and alcohol testing rules by ensuring that employers conduct business only with responsible service agents.

The DOT uses PIE's to exclude any service agent from participating in its drug and alcohol testing program that by serious noncompliance has shown that it is not currently acting in a responsible manner. The process by which a service agent is issued a PIE is found in Subpart R of Part 40.

The DOT maintains a document called "List of Excluded Drug and Alcohol Service Agents" which lists those agents who cannot be used in DOT drug and alcohol programs. This document can be found at the DOT website.