

PART 40 - PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

Source: 65 Federal Register (FR) 79462, Dec. 19, 2000;
65 FR 41944, Aug. 9, 2001

Subpart B - Employer Responsibilities

§40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?

(a) Yes, as an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in paragraph (b) of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for you for the first time (i.e., a new hire, an employee transfers into a safety-sensitive position). If the employee refuses to provide this written consent, you must not permit the employee to perform safety-sensitive functions.

(b) You must request the information listed in this paragraph (b) from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer:

- (1) Alcohol tests with a result of 0.04 or higher alcohol concentration;
- (2) Verified positive drug tests;
- (3) Refusals to be tested (including verified adulterated or substituted drug test results);
- (4) Other violations of DOT agency drug and alcohol testing regulations; and
- (5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the

employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), you must seek to obtain this information from the employee.

(c) The information obtained from a previous employer includes any drug or alcohol test information obtained from previous employers under this section or other applicable DOT agency regulations.

(d) If feasible, you must obtain and review this information before the employee first performs safety-sensitive functions. If this is not feasible, you must obtain and review the information as soon as possible. However, you must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless you have obtained or made and documented a good faith effort to obtain this information.

(e) If you obtain information that the employee has violated a DOT agency drug and alcohol regulation, you must not use the employee to perform safety-sensitive functions unless you also obtain information that the employee has subsequently complied with the return-to-duty requirements of Subpart O of this part and DOT agency drug and alcohol regulations.

(f) You must provide to each of the employers from whom you request information under paragraph (b) of this section written consent for the release of the information cited in paragraph (a) of this section.

(g) The release of information under this section must be in any written form (e.g., fax, e-mail, letter) that ensures confidentiality. As the previous employer, you must maintain a written record of the information released, including the date, the party to whom it was released, and a summary of the information provided.

(h) If you are an employer from whom information is requested under paragraph (b) of this section, you must, after reviewing the employee's specific, written consent, immediately release the requested information to the employer making the inquiry.

(i) As the employer requesting the information required under this section, you must maintain a written, confidential record of the information you obtain or of the good faith efforts you made to obtain the information. You must retain this information for three years from the date of the employee's first performance of safety-sensitive duties for you.

(j) As the employer, you must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, you must not use the employee to perform safety-sensitive functions for you, until and unless the employee documents successful completion of the return-to-duty process (see paragraphs (b)(5) and (e) of this section).

FMCSA Drug and Alcohol Background Check Form
Applicant History Sheet

Employer _____ Date _____

Federal Motor Carrier Safety Administration regulations (49 CFR Part 40) require employers to inquire about the following information on an employee from the employee's previous employers during the two years immediately preceding the employee's date of application. This requirement applies only to employees seeking to begin performing safety-sensitive duties for the first time. The employer must obtain the employee's written consent to request this information. As an applicant/employee, you may refuse to provide this written consent, however the employer is not permitted to use the employee to perform safety-sensitive functions.

The information which must be requested is as follows:

- (1) Alcohol tests with a result of 0.04 or higher alcohol concentration;
- (2) Verified positive drug tests;
- (3) Refusals to be tested (including verified adulterated or substituted drug test results);
- (4) Other violations of DOT agency drug and alcohol testing regulations; and
- (5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests).

The information obtained must be held confidential, and must be retained for three years from the date of the employee's first performance of safety-sensitive functions.

The employer must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol test rules during the past two years.

(The entire text of this section of 49 CFR Part 40.25 is reprinted as an attachment/on the reverse side of this form)

TO BE COMPLETED BY THE APPLICANT:

The person below has applied for employment in a DOT safety-sensitive position, and grants permission for the above named employer to request the information required under 49 CFR Part 40.

Applicant name: _____ Social Security # _____

I hereby attest that the information I have provided herein is accurate and complete, and furthermore consent to the release of all drug and alcohol testing information that is being requested from the past two years of this application date.

Applicant Signature _____ Date _____

Listed below are all employers for whom I have worked in the last two years in a safety sensitive position:		
Employer	Supervisor Name	Area Code and Phone Number

Have you applied, but not been hired by any employers in the past two years who required a DOT drug and alcohol test? Yes No

If the answer above is YES, complete the following:
 On any of these tests, did you test positive or refuse to test? Yes No

FMCSA Drug and Alcohol Background Check Form
Employer History Reference Check

Employer _____ Date _____
 Contact _____ Fax _____
 Address _____ Phone _____

Federal Motor Carrier Safety Administration regulations (49 CFR Part 40) require employers to inquire about the following information on an employee from employers who employed the employee during the two years immediately preceding the date of application. The regulations also stipulate that if you are an employer from whom information is requested, you must, after reviewing the employee's specific written consent, immediately release the requested information to the employer making the inquiry.

The employee named below has identified you as being in your employ in the previous two years. Under the mandates of 49 CFR Part 40, we are requesting that you complete the information requested and return this form as soon as possible. Information that you provide will be held confidential and retained for three years as required.

(The entire text of this section of 49 CFR Part 40.25 is reprinted as an attachment/on the reverse side of this form)

TO BE COMPLETED BY THE APPLICANT:

The person below has applied for employment in a DOT safety-sensitive position, and grants permission for the above named employer to request the information required under 49 CFR Part 40.

Applicant name: _____ Social Security # _____

I consent to the release of all drug and alcohol testing information that is being requested from the past two years of this application date.

Applicant Signature _____ Date _____

TO BE COMPLETED BY THE PREVIOUS EMPLOYER:

If the driver was not subject to DOT drug and alcohol testing requirements while employed by you, please check here , sign below, and return.

(DOT regulations require inclusion of information received from other previous employers.)

- | | YES | NO |
|---|--------------------------|--------------------------|
| 1. Has this person ever had an alcohol test with a Breath Alcohol Concentration 0.04 or higher in the last two years? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Has this person had a verified positive drug test? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Has this person refused to be tested (including verified adulterated or substituted drug test results)? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Have there been any other violations of DOT agency drug and alcohol testing regulations? | <input type="checkbox"/> | <input type="checkbox"/> |

5. If YES to any of the above questions, please provide documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests).

This section completed by: Name: _____
 Position: _____
 Address: _____
 City, State, Zip: _____
 Telephone: _____
 (Signature) _____ Date _____

TO BE COMPLETED BY PROSPECTIVE EMPLOYER:

This form was (check one) Faxed to previous employer Mailed Date _____

Information received from: _____

Date Received: _____ Method: Fax Mail Phone

Recorded by: _____ Date _____