



STATE OF CALIFORNIA DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
CONTROLLED SUBSTANCES & ALCOHOL TESTING COMPLIANCE CHECKLIST

DRIVER RECORDS - CONTROLLED SUBSTANCES AND ALCOHOL TESTING

- Do you ensure that all required controlled substances and alcohol testing of CMV drivers complies with the procedures set forth in **49 CFR 40? 49 CFR 382.105**
- Before performing a controlled substances or alcohol test, is the individual notified that the test is required by the FMCSA and California law? **49 CFR 382.113, VC 34520**
- Are drivers who refuse to submit to required controlled substances or alcohol tests immediately removed from safety-sensitive functions? **49 CFR 382.211**
- Do you prohibit drivers who have tested positive for a controlled substance or have a breath alcohol concentration of 0.02 or above by test, or who have refused to be tested, from performing safety-sensitive functions? **49 CFR 382.215**
- Do you advise each of your drivers, at the time of hiring and again annually, of the prohibition against operating a CMV with a breath alcohol concentration of 0.01 or above? **VC 34501.16**
- Have you advised each of your drivers of the prohibitions against using alcohol while on duty? **49 CFR 382.205**
- Have you advised each of your drivers of the prohibitions against performing safety-sensitive functions within 4 hours of using alcohol? **49 CFR 382.207**
- Have you advised each of your drivers of the prohibitions against being on duty or operating a CMV while in the possession of unmanifested alcohol that is not being transported as part of the shipment, or is possessed or used by bus passengers? **VC 34520(a), 49 CFR 392.5(a)(3)**
- If you are conducting your own testing, are at least 10% of your drivers randomly tested each year for prohibited alcohol use? **49 CFR 382.305(b)(1)**
- If you are conducting your own testing, are at least 50% of your drivers randomly tested each year for controlled substances use? **49 CFR 382.305(b)(2)**
- Prior to the first time a driver performs a safety-sensitive function, is he or she tested for controlled substances use, and a negative result obtained? **49 CFR 382.301**
- Do you conduct required post-accident controlled substances and alcohol tests? **49 CFR 382.303 13.**
- Have you advised each of your drivers of the requirement to remain readily available for a post-accident test? **49 CFR 382.303**
- Is a driver tested when there is a reasonable suspicion that he or she has violated alcohol or controlled substances prohibitions? **49 CFR 382.307**
- Prior to returning to a safety-sensitive function following a positive test result for alcohol or controlled substances, is the driver required to pass a return-to-duty test? **49 CFR 382.503**
- Is each driver who has engaged in prohibited conduct evaluated by a substance abuse professional to determine what assistance the employee needs in resolving problems associated with alcohol or controlled substances use? **49 CFR 382.605**



- Do you ensure that a driver who has engaged in prohibited conduct and is returned to performing safety-sensitive functions is subject to unannounced follow-up testing at the direction of a substance abuse professional? **49 CFR 382.311**

TESTING RECORDS

(NOTE: Testing records may be maintained by the carrier's consortium or third party administrator provided they can be presented within 48 hours of a CHP request.)

1. Do you maintain the following records for a minimum of five years?
49 CFR 382.401(b)(1)
 - (a) Driver alcohol tests results indicating an alcohol concentration of 0.02 or greater.
 - (b) Driver verified positive controlled substances test results.
 - (c) Refusals to take required alcohol or controlled substances tests.
 - (d) Driver evaluations and referrals.
 - (e) Testing device calibration documentation.
2. Do you maintain records related to the administration of the controlled substances and alcohol testing programs? **49 CFR 382.401(b)(1)(vi)**
3. Do you maintain a copy of each required calendar year summary?
49 CFR 382.401(b)(1)(vii)
4. Do you maintain records related to the collection process for a minimum of two years?
49 CFR 382.401(b)(2)
5. Do you maintain records of negative and canceled controlled substances test results and alcohol test results with a concentration of less than 0.02 for a minimum of one year? **49 CFR 382.401(b)(3) 1**
6. Do you retain records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and drivers while the individuals who work in these capacities perform the functions which require the training and for two years after ceasing to perform the function? **49 CFR 382.401(b)(4)**
7. Do you maintain the following types of records? **49 CFR 382.401(c)**
 - (a) Collection book, if used.
 - (b) Documents relating to the random selection process.
 - (c) Calibration documentation for evidential breath testing devices.
 - (d) Documentation of breath alcohol technician training.
 - (e) Documents generated relating to decisions to administer reasonable suspicion controlled substances or alcohol tests.
 - (f) Documents generated in connection with decisions on post-accident tests.
 - (g) Medical explanation of the inability of a driver to pass a test.
 - (h) Consolidated annual calendar year summaries.
8. Do you maintain records related to a driver's test results? **49 CFR 382.401(c)(2)**
9. Do you maintain the employer's copy of alcohol test forms, including the results of the test? **49 CFR 382.401(c)(2)(i)**



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10. Do you maintain the employer's copy of the controlled substances test chain of custody and control forms? **49 CFR 382.401(c)(2)(ii)**
11. Do you maintain documents sent by the medical review officer?
49 CFR 382.401(c)(2)(iii)
12. Do you maintain documents related to the refusal of any driver to submit to a required controlled substances or alcohol test? **49 CFR 382.401(c)(2)(iv)**
13. Do you maintain documents presented by a driver to dispute the result of a controlled substances or alcohol test? **49 CFR 382.401(c)(2)(v)**
14. Do you maintain documents generated in connection with verifications of prior employers' alcohol or controlled substances results? **49 CFR 382.401(c)(2)(vi)**
15. Do you maintain records pertaining to a determination by a substance abuse professional concerning a driver's need for assistance? **49 CFR 382.401(c)(4)(I)**
16. Do you maintain records concerning a driver's compliance with recommendations of the substance abuse professional? **49 CFR 382.401(c)(4)(ii)**
17. Do you maintain the following records related to education and training?
49 CFR 382.401(c)(5) (a) Materials on alcohol misuse and controlled substances awareness, including a copy of the employer's policy. **49 CFR 382.401(c)(5)(I)**
(b) Documentation of compliance with information, training, and referral requirements. **49 CFR 382.401(c)(5)(ii)**
(c) Documentation of training provided to supervisors. **49 CFR 382.401(c)(5)(iii)**
(d) Documentation of training for breath alcohol technicians?
49 CFR 382.401(c)(5)(iv)
(e) Certification that any training conducted complies with the requirements?
49 CFR 382.401(c)(5)(v)
18. Do you maintain agreements with collection site facilities, labs, breath alcohol technicians, screening test technicians, medical review officers, consortia, and third party service providers? **49 CFR 382.401(c)(6)(i)**
19. Do you maintain names and positions of officials and their role in the employer's controlled substances and alcohol testing program? **49 CFR 382.401(c)(6)(ii)**
20. Do you maintain semi-annual laboratory statistical summaries of urinalysis?
49 CFR 382.401(c)(6)(iii)
21. Do you maintain a policy that covers controlled substances and alcohol testing procedures? **49 CFR 382.401(c)(6)(iv)**
22. Do you prepare and maintain a summary of the results of controlled substances and alcohol testing programs during the previous calendar year when requested?
49 CFR 382.403(a)
23. Do you contact a new driver's previous employers within 30 days of hiring to determine if during the previous two years the employee has had: **49 CFR 382.413 (ref. 49 CFR 40.25)**
 - (a) An alcohol test with a result of 0.04 alcohol concentration or greater.
 - (b) A verified positive controlled substances test result.
 - (c) A refusal to test.
 - (d) Any other violation of a DOT agency drug and alcohol testing regulation.



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- (e) Documentation of the successful completion of DOT return-to-duty requirements for an employee who has violated a DOT drug and alcohol regulation.
24. Do you make records of a former employee's required controlled substances and alcohol test results available to his or her subsequent employers? **49 CFR 382.405(f)**
25. Do you provide a copy of educational and training materials that explain the requirements of controlled substances and alcohol testing and your company's policies and procedures regarding testing requirements to every employee that is, or may be, called upon to perform a safety-sensitive function? **49 CFR 382.601(a)**
26. Do you provide written notice to employee organizations of the availability of testing information? **49 CFR 382.601(a)(2)**
27. Do the materials made available to drivers include detailed discussions of at least the following: **49 CFR 382.601(b)**
- (a) The identity of the person designated to answer driver questions about the materials.
 - (b) The categories of drivers who are subject to testing.
 - (c) Sufficient information about the safety-sensitive functions performed by drivers.
 - (d) Specific information concerning prohibited driver conduct.
 - (e) The circumstances under which a driver will be tested.
 - (f) The procedures used to test for the presence of alcohol or controlled substances, protect the driver and the integrity of the testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver.
 - (g) The requirement that a driver submit to a test.
 - (h) An explanation of what constitutes a refusal to submit to an alcohol or controlled substance test and the attendant consequences. 2
 - (i) The consequences for drivers found in violation.
 - (j) Information on the effects of controlled substances and alcohol use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem; and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and or referral to management.
28. Do you ensure that each driver is required to sign a statement certifying that he or she has received a copy of these materials? **49 CFR 382.601(d)**
29. Do you ensure that each driver who has engaged in prohibited conduct concerning alcohol or controlled substances is advised of the resources available for evaluating and resolving problems associated with the misuse of alcohol or controlled substances, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs? **49 CFR 382.605**

(NOTE: Question #30 pertains only to employers of drivers who operate school buses, school pupil activity buses, youth buses, and general public paratransit vehicles.)

30. Do you report the name of each driver whose required controlled substances or alcohol test resulted in a finding of positive to the Department of Motor Vehicles within five days? **VC 13376(b)(3)**



VC Section 34520 is reproduced below

34520. (a) Motor carriers and drivers shall comply with the controlled substances and alcohol use, transportation, and testing requirements of the United States Secretary of Transportation as set forth in Part 382 (commencing with Section 382.101) of, and Sections 392.5(a)(1) and 392.5(a)(3) of, Title 49 of the Code of Federal Regulations.

(b) (1) Every motor carrier shall make available for inspection, upon the request of an authorized employee of the department, copies of all results and other records pertaining to controlled substances and alcohol use and testing conducted pursuant to federal law, as specified in subdivision (a), including those records contained in individual driver qualification files.

(2) For the purposes of complying with the return-to-duty alcohol or controlled substances test requirements, or both, of Section 382.309 of Title 49 of the Code of Federal Regulations and the follow up alcohol or controlled substances test requirements, or both, of Section 382.311 of that title, the department may use those test results to monitor drivers who are motor carriers.

(3) No evidence derived from a positive test result in the possession of a motor carrier shall be admissible in a criminal prosecution concerning unlawful possession, sale, or distribution of controlled substances.

(c) Any drug or alcohol testing consortium, as defined in Section 382.107 of Title 49 of the Code of Federal Regulations, shall mail a copy of all drug and alcohol positive test result summaries to the department within three days of the test. This requirement applies only to drug and alcohol positive tests of those drivers employed by motor carriers who operate terminals within this state.

(d) A transit agency receiving federal financial assistance under Section 3, 9, or 18 of the Federal Transit Act, or under Section 103 (e)(4) of Title 23 of the United States Code, shall comply with the controlled substances and alcohol use and testing requirements of the United States Secretary of Transportation as set forth in Part 655 (commencing with Section 655.1) of Title 49 of the Code of Federal Regulations.

(e) The owner-operator shall notify all other motor carriers with whom he or she is under contract when the owner-operator has met the requirements of subdivision (c) of Section 15242. Notwithstanding subdivision (i), a violation of this subdivision is an infraction.

(f) Except as provided in Section 382.301 of Title 49 of the Code of Federal Regulations, an applicant for employment as a commercial driver or an owner-operator seeking to provide transportation services and meeting the requirements of subdivision (b) of Section 34624, may not be placed on duty by a motor carrier until a preemployment test for controlled substances and alcohol use meeting the requirements of the federal regulations referenced in subdivision (a) have been completed and a negative test result has been reported.

(g) An applicant for employment as a commercial driver or an owner-operator, seeking to provide transportation services and meeting the requirements of subdivision (b) of Section 34624, may not be placed on duty by a motor carrier until the motor carrier has



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completed a full investigation of the driver's employment history meeting the requirements of the federal regulations cited under subdivision (a). Every motor carrier, whether making or receiving inquiries concerning a driver's history, shall document all activities it has taken to comply with this subdivision.

(h) A motor carrier that utilizes a preemployment screening service to review applications is in compliance with the employer duties under subdivisions (e) and (f) if the preemployment screening services that are provided satisfy the requirements of state and federal law and the motor carrier abides by any findings that would, under federal law, disqualify an applicant from operating a commercial vehicle.

(i) It is a misdemeanor punishable by imprisonment in the county jail for six months and a fine not to exceed five thousand dollars (\$5,000), or by both the imprisonment and fine, for any person to willfully violate this section. As used in this subdivision, "willfully" has the same meaning as defined in Section 7 of the Penal Code. (j) This section does not apply to a peace officer, as defined in Section 830.1 or 830.2 of the Penal Code, who is authorized to drive vehicles described in Section 34500 if that peace officer is participating in a substance abuse detection program within the scope of his or her employment.

The federal regulation Sections referenced in VC 34520(a) above are as follows:
CFR 392.5

(a) No driver shall -

(1) Use alcohol, as defined in §382.107 of this subchapter, (382.107-Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.) or be under the influence of alcohol, within 4 hours before going on duty or operating, or having physical control of, a commercial motor vehicle; or

(3) Be on duty or operate a commercial motor vehicle while the driver possesses wine of not less than one-half of one per centum of alcohol by volume, beer as defined in 26 U.S.C. 5052(a), of the Internal Revenue Code of 1954, and distilled spirits as defined in section 5002(a)(8), of such Code. However, this does not apply to possession of wine, beer, or distilled spirits which are:

- (i) Manifested and transported as part of a shipment; or
- (ii) Possessed or used by bus passengers. 3



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SATISFACTORY RATING

A carrier whose compliance with the controlled substances and alcohol testing regulations is rated satisfactory is one that is in substantial compliance with those regulations as determined during the most recent inspection of that program by the CHP. Minor deficiencies will not preclude assignment of a satisfactory compliance rating. Criteria for assignment of a satisfactory rating include:

Drivers are tested for alcohol and controlled substances use in the manner specified by federal regulations.

Alcohol and controlled substances testing records are kept as required, summary is produced upon request as required, and records are made available for inspection as required.

UNSATISFACTORY RATING

A carrier whose compliance is rated unsatisfactory is one showing evidence of widespread noncompliance or significantly declining compliance with statutory or regulatory requirements. An unsatisfactory compliance rating will be assigned for any condition described below:

Drivers are not tested for alcohol and controlled substances use in the manner specified by federal regulations.

Alcohol and controlled substances testing records are not kept as required, records are not produced upon request as required, or records are not made available for inspection as required.



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CONDITIONAL RATING

A carrier whose compliance is rated conditional is one in which the carrier's previous rating was unsatisfactory, and a reinspection has indicated that compliance is no longer manifestly unsatisfactory, but full compliance has not been demonstrated. In this case, the CHP will return for a follow-up inspection in approximately six months to assign a new rating. The new rating will not be conditional; it will be either satisfactory or unsatisfactory. Under certain circumstances, when reinspecting a carrier currently holding an unsatisfactory compliance rating, the CHP may be unable to determine that all required corrections have been fully accomplished by the motor carrier. Examples would be a carrier who had instituted corrective measures such as discontinuing practices that corrupt the randomness of driver selection, or had increased the rate at which drivers are randomly tested to meet the minimum rate prescribed in federal regulations. These are corrections whose true effects will not be known for some time, and until that time passes, cannot be fully evaluated. However, the CHP may be able to determine that the corrective measures taken by the carrier, if sustained throughout the coming year, would result in satisfactory compliance. Under such circumstances, the CHP will normally assign a conditional rating to that carrier, and return later to reevaluate compliance and assign a new rating accordingly.

ABBREVIATIONS USED

13 CCR: Title 13, California Code of Regulations DMV: Department of Motor Vehicles
49 CFR: Title 49, Code of Federal Regulations FMCSA: Federal Motor Carrier Safety
Administration CHP: California Highway Patrol VC: (California) Vehicle Code
CMV: Commercial Motor Vehicle USDOT: United States Department of Transportation



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ABOUT THIS CHECKLIST

This checklist, while detailed, cannot list all possible items where compliance with the referenced federal regulations could be an issue, nor can it explore all possible applications of CHP policy in the assignment of ratings. A motor carrier who examines his or her operations using this checklist as a guide can identify areas where compliance may be weak, and take action to improve those areas. The federal regulations are amended occasionally, and staying current with those amendments is one of the keys to success for anyone who operates or directs the operation of commercial motor vehicles. This checklist is intended only to assist motor carriers in achieving success in the area of highway safety. It does not bind the CHP to a particular determination regarding the compliance of any motor carrier with laws and regulations in existence at any given moment. Any conflict between this checklist and a law or regulation, or future change in CHP policy, will be resolved in favor of the law, regulation, or policy. This checklist will be revised to reflect significant changes in these areas as soon as possible after they occur.

The following checklist and other general information are provided to assist motor carriers subject to inspection by the Department of the California Highway Patrol (CHP) pursuant to Vehicle Code Section 34501, specifically with respect to the testing of commercial motor vehicle drivers for use of controlled substances and abuse of alcohol. The CHP enforces the federal regulations found in Title 49, Code of Federal Regulations (49 CFR), Part 382. Vehicle Code Section 34520 applies those federal regulations to every driver who is required to maintain a commercial driver license to operate a commercial motor vehicle, and to employers of those drivers, as defined in the federal regulations. See 49 CFR 382.103 to determine applicability. Motor carriers can improve their ability to pass such inspections by closely examining their own operations in the light of the following checklist.