



## Frequently Asked Questions (FAQs) for Municipal Commercial Motor Vehicle Operations

This list of frequently asked questions (FAQs) arises from the many commonly asked questions we receive from designated employer representatives (DERs), selectboard members, highway department supervisors and others charged with administering or complying with State and Federal commercial motor vehicle requirements. It is in no way an exhaustive list, so please contact us if you have a specific situation or question regarding the operation of this important program.

### Commercial Motor Vehicles vs. Heavy Equipment

**Q: What is a commercial motor vehicle (CMV)?**

A: A 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 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); 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).

Individuals operating the above vehicles must have a valid CDL (commercial driver's license).

**Q: Are heavy equipment and similar construction vehicles such as bucket loader, backhoe, road grader, etc. considered CMVs?**

A: According to a written interpretation from the US DOT office in Vermont, these vehicles would typically NOT be considered commercial motor vehicles when their over-the-road use is limited to travel from the storage location to the work location and return. Work performed at a construction location (even if on a public roadway) is treated similarly and does not result in these vehicles being classified as CMVs.

**Q: Although not a CMV, does municipally owned heavy equipment (such as a bucket loader, grader, or backhoe) that operate over the public roads need a registration?**

A: Yes, per Vermont DMV these are issued municipal plates and must be registered.

**Q: A municipality rents a wheeled excavator and has it delivered to the town garage by a vendor owner. They drive it over the road to a jobsite, possibly using it for several days and at several locations. The vehicle is not registered by the owner. How does the municipality handle this situation?**



## Frequently Asked Questions (FAQs) for Municipal Commercial Motor Vehicle Operations

A: Per Vermont DMV, this vehicle must be registered. From PACIF's perspective, it makes the most sense that the vehicle be registered by the vehicle owner, who is essentially renting or leasing it out. They should understand that it may be used over public roads. The municipality should request the vehicle owner to register the vehicle. Example-when renting a car, the renter does not register the vehicle. The rental car company does.

**Q: In cases where vehicles are trailered to a job site and trailered back to a central location without traveling over the road, do these vehicles need a current registration? Similarly, would a heavy equipment vehicle located at a sand pit need a registration?**

A: Per Vermont DMV, if the job site is open to the public flow of traffic or the vehicle/equipment is driven over the road, it must be registered. Any specific questions should be directed to Vermont DMV.

**Q: Is there a requirement that these same (heavy equipment) vehicles also have current Vermont inspection stickers?**

A: Per Vermont DMV, there is no inspection requirement - however the *PACIF loss control recommendation* is that these vehicles do undergo periodic inspections by qualified mechanics to ensure that all safety systems and equipment performs properly and is in a good state of repair.

### Drug and Alcohol Testing

**Q: Why must our municipality comply with drug and alcohol testing requirements?**

A: All licensed commercial motor vehicle drivers who are employed by and drive CMVs (commercial motor vehicles) for a municipality are subject to the controlled substance and alcohol testing rules as outlined in the Code of Federal regulations, Title 49. This includes all local governmental entities. NOTE: Fire trucks are not CMVs and therefore are exempt from this requirement. Failure to fully comply could subject the municipality to fines from Federal DOT. Individuals who only operate non-CMVs must not be included in the testing program as they are not covered by the Federal drug & alcohol testing requirements.

**Q: Does our municipality need to have a Drug & Alcohol Testing Policy in place?**

A: If the municipality has CMVs that are operated by municipal employees, a drug & alcohol policy must be established. The policy must be communicated to all affected employees and it must include the 11 mandatory elements outlined in the FMCSA rules, section 382.601.



## Frequently Asked Questions (FAQs) for Municipal Commercial Motor Vehicle Operations

**Q: What needs to be included in a drug & alcohol testing policy to meet the Federal requirements?**

A: Please review the enclosed document entitled "Drug & Alcohol Testing Policy-11 Mandated Requirements". The sample policy developed by PACIF includes all 11 required elements.

**Q: Does the municipality need to document that employees understand the municipal drug & alcohol policy?**

A: Yes. Employees subject to the drug & alcohol policy must sign a statement confirming that they have received a copy of the testing policy. An acknowledgement form for this purpose is included in this manual. The completed form should be retained in the driver's personnel file.

**Q: What if our municipality does not employ the CDL drivers, but instead contracts with a vendor/contractor who supplies either the drivers for municipal vehicles or both the drivers and vehicles?**

A: In either of these situations, the contractor or vendor is the employer of the CDL drivers and is therefore responsible for complying with the drug & alcohol testing requirements. They have the burden to place their employees in a DOT random testing pool and establish a drug and alcohol testing policy. If your municipality contracts for these types of services, we recommend that you include contractual language that requires the vendor or contractor to comply with DOT/FMCSA drug & alcohol testing requirements.

**Q: Do I need a drug & alcohol testing policy if our municipality does not operate CMVs?**

A: No. It is the operation of commercial motor vehicles that triggers the requirement.

**Q: Does the FMCSA ever suspend random, pre-employment and other drug & alcohol testing requirements during emergencies?**

A: No, there are not any storm or disaster waivers for the drug & alcohol testing, per FMCSA.

**Q: If I have a current CDL driver who has a confirmed positive test result, can our municipality terminate the employee?**

A: According to the FMCSA rules, the only requirement is that the individual be referred to a substance abuse professional (SAP). The municipality would initiate this process by contacting Invest EAP who will provide an appropriate SAP referral. Financial responsibility for SAP services is not dictated by US DOT regulation; therefore it should be clarified elsewhere in municipal personnel policy – or may be included in the Drug &



## Frequently Asked Questions (FAQs) for Municipal Commercial Motor Vehicle Operations

Alcohol Policy for CMV Operators. The individual may be held responsible for any costs for those services (whether covered through health insurance or not).

Since FMCSA regulations are silent on the issue of employee termination, Vermont laws may apply. Our current recommendation is to develop a policy that mirrors the Vermont statute, which in essence would not terminate the employee on the first positive test result. This will help avoid potential employment practice liability claims, until such time as case law or changes in the statute clarify legislative intent. Please reference language outlined in our model Drug & Alcohol Policy for CMV Operators.

As is the case with any major employment action, consulting an attorney skilled in employment law before taking action is a risk management best practice that PACIF highly recommends. If you are considering taking some type of employment action, please contact Risk Management staff (802-229-9111) who will provide a referral to one of our attorney partner firms for up to 3 hours of free legal assistance.

**Q: If we suspect one of our commercial motor vehicle operators of using or being under the influence of drugs or alcohol, can we have them tested right away?**

A: Reasonable suspicion tests are only permitted when managers and/or other supervisory personnel have completed a qualifying training program on the signs and symptoms of drug and alcohol use. VLCT/PACIF will periodically offer these training sessions at no cost, so contact us if you would like to schedule this for individuals serving this function. Reasonable suspicion training only needs to be completed once, with no requirement for a refresher.

In order to legally conduct a reasonable suspicion test, a trained supervisor must have direct information or a reasonable suspicion that drug and/or alcohol is being used by a CDL operator. When requesting reasonable suspicion tests, the trained supervisor or manager should provide written documentation of the observations and findings that supported the request to conduct the testing. This documentation should be retained in the driver's personnel records.

**Q: If one of our CMV drivers has an accident while operating a commercial motor vehicle, must the employee undergo drug and alcohol testing?**

A: Maybe. It depends on the outcomes of the accident. If there was a fatality, then yes testing must occur. If citations were issued and there was medical treatment away from the scene, or a vehicle was disabled, then typically testing is required.

Per FMCSA §382.303, alcohol testing can only be performed up to 8 hours after the incident. Beyond that timeframe, the employer must document the reason why the testing was not performed. If the alcohol test is delayed beyond 2 hours, the employer must document why the test was delayed. Drug testing can be performed up to 32 hours after the incident. Since the issuance of citations is often delayed, it will be important that the



## Frequently Asked Questions (FAQs) for Municipal Commercial Motor Vehicle Operations

employer closely monitor the situation to determine whether citations are issued within the 32 hour drug testing window so that testing can be performed if required. Beyond 32 hours, the employer must document the reasons why the testing was not performed. Please review the post-accident testing section in the model drug and alcohol policy for additional guidance on this issue.

**Q: We have an existing employee who has not been in the drug and alcohol testing program, but now wants to apply for a position on the road crew as a CMV driver. Do any testing requirements apply?**

A: Yes. You should treat the employee as you would any job applicant and conduct pre-employment drug testing. If you choose to offer the employee the CMV driver position, you should offer it contingent upon successful completion of a drug test. If the person fails the test, you should rescind the offer of employment. There is no requirement to refer the employee to EAP (employee assistance program), but that would seem to be a prudent course of action.

A positive drug test result that arose from an existing (non-CMV operator) employee may have some impact on the person's current employment, depending on your existing personnel policy. Prior to considering any type of employment action (disciplinary action, termination, etc.), please discuss the situation with an attorney skilled in employment law.

**Q: We use seasonal drivers at various times during the year to supplement our highway crew. Do these drivers need to be in the drug and alcohol testing program?**

A: Yes. All drivers (including seasonal, part time or full time) of commercial motor vehicles need to be in your drug and alcohol testing program. Each time seasonal drivers are hired (for their "season"), they should undergo a pre-employment drug test and then be added to the drug & alcohol random testing pool. This will require planning in advance to ensure that tests are completed PRIOR to hiring. When they leave employment they should be removed from the pool. Alternatively, seasonal drivers can remain in the pool, but only if the driver understands that they must be available for random testing if their name is drawn. Failure to complete a random test could result in a refusal to test result which is a prohibited conduct under the drug and alcohol regulations.

In some cases, seasonal drivers may have concurrent employment with other CDL employers. Since there is no mechanism to share drug testing information between the concurrent employers, the municipality must complete pre-employment drug testing and place the seasonal driver in their drug and alcohol testing pool as described above. This interpretation was confirmed by the Federal DOT office in Montpelier.



## Frequently Asked Questions (FAQs) for Municipal Commercial Motor Vehicle Operations

**Q: One of our drivers was injured and will is expected to be out of work for a month or more. Does this driver need to be removed from the drug and alcohol testing pool?**

A: Any driver that will be out of work and unavailable for testing for more than one (1) selection period (quarter), MUST be removed from the from the testing pool. Best practice is to remove the employee from the testing pool after they have not performed safety sensitive duties for 30 days.

In practice, an employee who is out of work for this period should be considered for removal from the testing pool. Before pulling them from the pool, it would be important to consider where you are in the testing cycle and any additional amount of time that the employee is expected to be out of work. Once the employee is removed from the pool, the employee MUST have a DOT pre-employment test, per 49 CFR 382 before they return to safety sensitive duties. If you are not sure whether or not to remove the driver, please call Occupational Drug Testing, LLC at 1-802-225-8350 for further guidance.

**Q: What are the consequences for an employer who does not fully comply with the Federal DOT and FMCSA requirements regarding Drug & Alcohol testing for commercial motor vehicle operators?**

A: All employers subject to these standards (including municipalities) can be inspected by Federal DOT personnel. Employers found to be in non-compliance could be subjected to fines.

**Q: Who is responsible for reimbursing the SAP for services rendered? Who is responsible for paying for return to duty testing or follow-up testing recommended by the SAP?**

A: The DOT regulations do not affix responsibility for payment for SAP services upon any single party. The DOT has left discussions regarding payment to employer policies and to labor-management agreements. Therefore, in some instances, this issue has become part of labor-management negotiations. Employer policies should address this payment issue.

Regarding follow-up testing recommended by the SAP, this occurs only after an acceptable return to duty test is obtained. US DOT regulations do not affix payment responsibility for either of these tests and therefore responsibility for payment, employee reimbursement of the employer, etc. should be addressed by employer policy. This may be within the context of the Drug & Alcohol policy or located in other personnel or reimbursement policies. There is no requirement that it be outlined within the CMV Drug & Alcohol Policy. Lastly, whether the employer pays or the employee pays, the employer must ensure that follow-up testing occurs as required. The employer will be held accountable if the follow-up testing plan is not followed.



# Frequently Asked Questions (FAQs) for Municipal Commercial Motor Vehicle Operations

## Operational Issues

**Q: We need to replace a CDL driver on our road crew and have decided to make an offer to an applicant for the position. What are we required to do?**

A: Any offer of employment to a CDL driver must be made contingent upon the individual satisfactorily completing a pre-employment drug test. In most cases, this test can be easily arranged in advance with the testing provider. We recommend that the prospective employee not do any work for the municipality until a negative test result is obtained. In no case should an individual be hired and be permitted to perform safety-sensitive duties before the pre-employment drug test is completed and passed. If a positive test result is obtained from a pre-employment test, do not hire the individual.

**Q: Are municipalities required to check the motor vehicle records (MVRs) of their CDL drivers?**

A: Yes. This is an annual requirement for all employers with CMV operators and must also be completed at hire. PACIF does not obtain MVRs on behalf of municipalities. A copy of the Vermont Dept. of Motor Vehicles MVR form is included in the *Hiring* section of this manual. Note that there should be no charge for obtaining MVRs because municipalities are "governmental entities". Be sure to have the driver sign the authorization on the MVR form.

CDL drivers are also required to "self-certify" the presence or absence of any motor vehicle violations in any state, on an annual basis. A sample self-certification form is enclosed in the *Recordkeeping* section of the manual. Both the self-certification and MVR must be kept in the driver qualification file. (See the driver qualification file documents in the *Hiring* and *Recordkeeping* sections for more information on these and similar requirements.)

In addition to pre-employment testing, your municipality must send a request to the prospective employee's current and/or former employer(s) in an attempt to obtain prior drug & alcohol testing information, as well as work history. This is a requirement. A form for this purpose is included in the *Hiring* section of the PACIF Drug and Alcohol Testing Manual.

**Q: Do our CMV operators need medical cards?**

A: Technically, municipal CMV operators who only operate their CDL vehicles on municipal business are exempt from this requirement. These are called excepted drivers and there are two classes—intrastate and interstate. Please review the CDL Medical Self-Certification document from Vermont DMV that is located in the *Guidance* section. Employees who want to retain the ability to work for non-municipal employers will need to get a medical card at least every two years, or as per the physician's recertification timeline.

From a risk management perspective, we do encourage municipalities to establish medical card requirements for the CMV operators, despite the exemption. The rationale is that the medical examinations required to obtain the medical certification cards will provide the



## Frequently Asked Questions (FAQs) for Municipal Commercial Motor Vehicle Operations

municipality with a reasonable level of assurance that the drivers have no medical conditions that would make them a safety risk to the general public. We believe that implementing a medical card requirement is a reasonable risk management measure. As a side benefit, your CMV drivers will also retain their ability to drive CMVs for non-municipal employers, if they ever have a need to. (This makes it a good selling point to them as well.)

**Q: Are municipal commercial motor vehicle operators with "J" (excepted intrastate) restrictions on their CDL permitted to cross state lines in their commercial motor vehicles while performing municipal business (examples, hauling sand/gravel to their garage from an out of state pit, dropping off or picking up a vehicle from service/repairs or purchasing a new vehicle).**

A: Per Vermont DMV, CMV operators with J restrictions ARE permitted to cross state lines while operating municipal commercial motor vehicles on municipal business.

**Q: Are pre-trip and post-trip vehicle inspections required for municipalities?**

A: While researching the issue of commercial motor vehicle daily inspections, we learned that neither the FMCSA, nor Vermont DMV actually require pre or post trip inspections for municipal commercial motor vehicles. However, in our discussions with both agencies, they were quite clear that they highly recommend that municipalities do these inspections. We believe that completing daily vehicle inspections is a risk management best practice and agree that municipalities should be doing these as part of their safety and risk management program. Completing daily inspections of your commercial motor vehicles is the best way to ensure that they are safe to operate and it increases the likelihood that they will be ready when they are needed. Please contact your loss control consultant for a sample pre-trip vehicle inspection report form. These are also available on our website.

If we have not answered your question, please contact your loss control consultant or our office directly at 800-6549-7915. You may also email [losscontrol@vlct.org](mailto:losscontrol@vlct.org).