

# The RIDE Policies



Massachusetts Bay  
Transportation Authority

## The RIDE Dedicated Service Provider Pre-Employment Requirements

# The RIDE

# Policies



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## Document Control

### Document Management and Authoring

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## PRE-EMPLOYMENT REQUIREMENTS

### Guidelines for Evaluation of Criminal History Record Information (for CORI, Out of State CORI, National Criminal History, and Terrorism Searches)

In the event that any criminal history background check reveals that a candidate for an employment, promotion, or transfer opportunity to a position covered herein has a record of conviction(s) for a misdemeanor and/or felony, such information will be reviewed by the Contractor. Based on the Contractor's evaluation of the background check results and other information, the candidate may be:

- Excluded from consideration for employment;
- Denied promotion or transfer into the position; and/or
- Terminated from employment, specifically in the candidate's current position; or
- Hired, promoted, or transferred, depending on the guidelines listed below and at the sole discretion of the Contractor.

When reviewing a CORI report<sup>1</sup> or any other record or report containing information on a criminal conviction, the Contractor shall make a determination concerning the status of the qualified candidate for employment, promotion, or transfer in accordance with the following General Guidelines and Specific Guidelines and in consideration of any legally-mandated disqualification criteria.

#### GENERAL GUIDELINES

Unless otherwise provided by applicable law, consideration shall be given to:

- Relevance of the crime to the position sought;
- The nature of the work to be performed;
- Time since the conviction;
- Age of the candidate at the time of the offense;
- Seriousness and specific circumstances of the offense;
- The number of offenses;

<sup>1</sup> Criminal Offender Record Information (CORI) refers to DCJIS's official collection of records and data in any communicable form compiled by a criminal justice agency concerning an identifiable individual and relating to the nature or disposition of a criminal charge, arrest, pre-trial proceeding, or other judicial proceeding, sentencing, incarceration, rehabilitation, or release. CORI records are limited to crimes investigated and prosecuted by the Commonwealth and do not include information related to federal crimes or crimes committed in other states.

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- Whether the candidate has pending charges;
- Any relevant evidence of rehabilitation or lack thereof; and
- Any other relevant information, including information submitted by the candidate or requested by the Contractor.

## SPECIFIC GUIDELINES

### *Felony Convictions*

As of October 13, 2018, the Standard Access CORI report will contain the following felony information:

- All convictions for murder, voluntary manslaughter, involuntary manslaughter, and sex offenses (as defined in M.G.L. c. 6, § 178C) punishable by a term of incarceration in state prison, unless sealed, including information relating to those offenses for which the individual was adjudicated as an adult while younger than 18 years old;
- All felony convictions for ten (10) years following the date of disposition or date of release from incarceration or custody, whichever is later; and
- If an individual has a felony conviction, or has been released from incarceration or custody for a felony conviction, within ten (10) years of the date of a Standard Access request, then the CORI will include all adult convictions dating from the subject's 18<sup>th</sup> birthday, and, if the subject was adjudicated as an adult while younger than 18 years old, information relating to those offenses.

Felony convictions shall be assessed on an individualized basis employing the General Guidelines and assessing such factors as the number of convictions, type and dates of crime(s) committed, as well as the length of incarceration and the relevance of the crime to the position held or sought. Depending upon an assessment of the CORI report, an individual may be deemed ineligible for employment, promotion, or transfer.

In the event that more than ten (10) years have elapsed since the date of the felony conviction, or the end of a period of incarceration resulting therefrom (whichever is later), an individual may be deemed eligible for employment.

However, if in the opinion of the Contractor, the nature of the crime and the candidate's overall criminal record raises concern for public safety and/or may have a potentially negative impact on the Contractor's business and/or operating interests, the candidate shall not be considered for employment, promotion, or transfer. In the event that the candidate is a current employee of the Contractor, the candidate may be subject to termination of employment.

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Any determination regarding public safety considerations and/or the potentially negative impact on the Contractor's business and/or operating interests shall be made by the Contractor.

### *Misdemeanor Convictions*

As of October 13, 2018, the Standard Access CORI report will contain the following misdemeanor information:

- All misdemeanor convictions for three (3) years following the date of disposition or date of release from incarceration or custody, whichever is later; and
- If a subject has been convicted of a misdemeanor, or has been released from incarceration or custody for a misdemeanor conviction, within three (3) years of the date of a Standard Access request, then the CORI will include all adult convictions dating from the candidate's 18<sup>th</sup> birthday, and, if the candidate was adjudicated as an adult while younger than 18 years old, information relating to those offenses.

Misdemeanor convictions will be assessed on an individualized basis employing the General Guidelines and assessing such factors as the number of convictions, type and dates of crime(s) committed, as well as the length of incarceration or custody and the relevance of the crime to the position held or sought.

While candidates will not be questioned about first convictions for drunkenness, simple assault, speeding, minor traffic violations, affray or disturbance of the peace, the Contractor may consider this information in making its determination.

Candidates will not be questioned about a conviction of a misdemeanor where the date of disposition or date of release from incarceration or custody, whichever is later, occurred more than three (3) years before the CORI request, unless there has been a subsequent conviction for any offense.

In the event that more than three (3) years has elapsed since the date of the misdemeanor conviction, or the end of a period of incarceration resulting (whichever is later), the candidate may be considered eligible for employment.

Depending upon an assessment of the CORI report or other criminal information, a candidate may be deemed disqualified for the employment, promotion, or transfer opportunity.

If in the opinion of the Contractor, the nature of the crime or the candidate's overall criminal record raises public safety considerations and/or may have a potentially negative impact on Contractor's business and/or operating interests, the candidate will not be considered for employment,

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promotion or transfer. In the event that the candidate is a current employee of the Contractor, the candidate may be subject to termination of employment in their current position.

Any determination regarding public safety considerations and/or the potentially negative impact on the Contractor's business and/or operating interests shall be made by the Contractor.

### *Pending Cases*

The Standard Access CORI report will contain the following information concerning open or pending cases:

- Any criminal charges pending as of the date of the CORI request, including open cases that have been continued without a finding (CWOFF).

If a CORI inquiry results in the report of a pending case, the Contractor will seek to update the CORI search for any pending criminal matter that is relevant to the position. If the Contractor is inclined to make an adverse decision based on these results, it will proceed in the following manner:

- The candidate will be notified immediately by telephone, fax, or electronic or hard copy correspondence. Pursuant to DCJIS guidelines, prior to any final decision the Contractor will inform the candidate of its pending decision by letter and will provide no less than five (5) business days from the date of the letter for the applicant to contact the Contractor to schedule a meeting and/or provide additional information.
- In the correspondence to the candidate, the Contractor will provide the candidate with: (i) a copy of the applicant's CORI record or criminal history information, (ii) the specific information in the record that is the basis for the potential adverse action, (iii) a copy of the DCJIS form entitled *Information Concerning the Process in Correcting a Criminal Record*, and (iv) a copy of this policy. The Contractor will document all steps taken in this process.
- The candidate will *generally* have fifteen (15) business days from the date of the letter to provide additional information regarding the accuracy of the CORI record and information concerning the relevance of the CORI or other criminal information. Whether or not a meeting takes place, the Contractor will make a final determination *generally* within thirty (30) days based on the available record and any other information received from the candidate.

### *Sealed or Expunged Records*

The Standard Access CORI report will not contain a criminal record, or anything related to a criminal record, that has been sealed or expunged pursuant to M.G.L. Chapter 276.

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## *Other Considerations*

In addition to the guidelines set forth above a compelling presumption shall exist under this policy that the candidate is unfit for Contractor employment, if any candidate has been convicted of a crime involving:

- Criminal sexual activity;
- Violence constituting a felony;
- Controlled substances;
- Larceny, such as theft or embezzlement; and/or
- Driving under the influence of alcohol and/or drugs on more than one occasion.

## Guidelines for Evaluation of Driving Record

### GENERAL GUIDELINES FOR EVALUATING DRIVING RECORD INFORMATION

All candidates for employment as a Revenue Vehicle Operator, Safety Supervisor, Non-Revenue Vehicle Operator, or a position that requires the incumbent to be an Occasional Vehicle Operator, shall provide the Contractor with a list of all jurisdictions or states in which the candidate resided for the most recent ten (10) years, starting with the candidate's present jurisdiction or state. Candidates are required to provide a driving record for each jurisdiction or state in which the candidate is or was licensed to drive for the past ten (10) years. The Contractor may obtain a candidate's Massachusetts driving record directly from the Registry of Motor Vehicles.

Should candidates choose not to provide the requested driving record, they shall not be further considered for employment.

If the Contractor intends to exclude a candidate from consideration for employment based on the candidate's driving record information, the candidate will be notified as soon as possible.

### DEFINITIONS

**At-Fault Accident:** Refers to any motor vehicle accident where the licensee was determined by a court, state agency, and/or insurance company to be more than 50% at fault for causing the accident.

**Major Accident:** An an at-fault accident where the claim payment is above a certain threshold, as described in 211 CMR 134.09(3)(a). The threshold is \$5000 or as otherwise described in 211 CMR 134.09(3)(a).

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**Major Traffic Law Violation:** As described in the 211 CMR 134.09(3)(c), including, but not limited to driving to endanger or reckless driving, operating under the influence of liquor or narcotics, operating after revocation of license, and vehicular homicide.

**Minor Accident:** An at-fault accident where the claim payment is below a certain threshold, as described in the 211 CMR 134.09(3)(b).

**Minor Traffic Law Violation:** As described in the 211 CMR 134.09(3)(d), is a traffic law violation less serious than a Major Traffic Law Violation, including, but not limited to, speeding, operating a vehicle with improper lights, and failing to obey a traffic control signal. Minor Traffic Law Violations do not include any rule, regulation, order, ordinance, or by-law regulating the parking of motor vehicles.

**Non-Renewable Status of License:** A driver's license is not eligible for renewal because the licensee is in violation of an applicable rule, regulation, and/or policy governing the renewal of driver's licenses in the jurisdiction where the license was issued.

**Non-Revenue Vehicle Operator:** A Contract employee whose regular job responsibilities include operating a Non-Revenue Vehicle.

**Occasional Vehicle Operator:** A Contract employee whose job responsibilities include operating, from time to time, on an irregular basis, a Non-Revenue Vehicle.

**Revenue Vehicle Operator:** A Contract employee whose job responsibilities include operating a Revenue Vehicle.

**Safe Driver Insurance Plan (SDIP):** The plan described in 211 CMR 134.00.

**SDIP Surcharge Points:** Merit Rating Board assignments in accordance with regulations of the Massachusetts Division of Insurance to each Accident and Traffic Law Violation as follows: a Minor Accident is three (3) surcharge points, a Major Accident is four (4) surcharge points, a Minor Traffic Law Violation is two (2) surcharge points, and a Major Traffic Law Violation is five (5) surcharge points. Massachusetts driving records include surcharge point assignment. Contractor will assign SDIP points to accidents and violations on out-of-state driving records using the definitions in this policy.

## SPECIFIC GUIDELINES FOR EVALUATING DRIVING RECORD INFORMATION/HISTORY

A candidate for Revenue Vehicle Operator, Safety Supervisor, Non-Revenue Vehicle Operator, or a position in which they would be an Occasional Vehicle Operator will not be considered for further employment with the Contractor if they have a driving record containing any of the following:

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- Five (5) or more Safe Driver Insurance Plan (SDIP) Surcharge Points in the past **three (3) years**, with the first Minor Traffic Law Violation in the period counting as zero (0) points if the candidate has six (6) or more years of driving experience, the Violation is the first Traffic Law Violation in the period, and the Violation is non-criminal as described in the SDIP 134.13(5).
- A license suspension in the past **five (5) years** that resulted from one or more Traffic Law Violations.
- Any license suspension resulting from a drug conviction (codified in Massachusetts at M.G.L. c. 90 Section 22) within past **ten (10) years**. A conviction, a guilty plea, a finding of responsibility, a continuance without a finding (CWOFF), or an assignment to a 24D program or a driver alcohol education program as an alternative disposition on an Operating Under the Influence (OUI) or a like violation in any other state or jurisdiction within the past **ten (10) years**.
- A refusal of a breathalyzer test in the past **ten (10) years**.
- An Interlock restriction on his/her driver's license in the past **ten (10) years**.
- A conviction, guilty plea, finding of responsibility, or CWOFF of motor vehicle homicide.

## DRIVING RECORD DEFINITIONS:

Automobile Law Violation: synonymous in meaning and equal in scope to the definition contained in M.G.L c.90C, §1. This term encompasses any convictions, findings of responsibility, guilty pleas, and/or admissions to sufficient facts, including a continuance without a finding (“CWOFF”), for both criminal and civil motor vehicle violations. It does not include a violation of any rule, regulation, order, ordinance, or by-law regulating the parking of motor vehicles.

Major Traffic Law Violation: refers to any convictions, findings of responsibility, guilty pleas, and/or admissions to sufficient facts, including a continuance without a finding (“CWOFF”), for each of the major traffic law violations listed in Appendix A, at 211 CMR 92, including, but not limited to, driving to endanger or reckless driving, operating under the influence of liquor or narcotics, operating after revocation of license, and vehicular homicide.

## NON-RENEWABLE STATUS OF DRIVER’S LICENSE FOR CANDIDATES FOR REVENUE VEHICLE OPERATORS, NON-REVENUE VEHICLE OPERATORS, AND OCCASIONAL VEHICLE OPERATORS

If any candidate for Revenue Vehicle Operator, Non-Revenue Vehicle Operator, or a position that requires the candidate to be an Occasional Vehicle Operator has a non-renewable status of their driver’s license, the candidate will be required to obtain a Non-Renew (NRE) Display Ticket for License from the appropriate Registry of Motor Vehicles. Any unpaid fines listed on the “NRE

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Display Tickets for License” must be paid before the candidate can be hired. Proof of payment must be provided to the Contractor within 15 business days of the date on which the Contractor so notifies the candidate.

## PERIODIC DRIVING RECORD INFORMATION/HISTORY REVIEW

The MBTA reserves the right to periodically check the driving records/histories and/or license status of Contractor employees and to request the Contractor take any action, up to and including removal of the employee from the Contract, based on its review of the employee’s driving record/history.

## Confidentiality

While personal information (such as address, social security number, and date of birth) contained in driving records is protected as personal information under the federal Driver Privacy Protection Act, driving histories are public records unless otherwise exempt by applicable statutes.

## VEHICLE OPERATOR / APPLICANT DOT PHYSICAL EXAM EXEMPTIONS

### Applicability

The Massachusetts Department of Transportation classifies a “commercial vehicle” as any vehicle with a gross vehicle weight rating (GVWR) of 10,001 pounds or more and imposes specific federal DOT medical and other certifications to permit operation of such vehicles in the Commonwealth. The law of the Commonwealth of Massachusetts and the MBTA (“Authority”) Contract each require that existing and new drivers of such vehicles pass a DOT physical exam and remain medically certified to drive such vehicles.

For current and new Vehicle Operators of sedans or other vehicles with a GVWR of less than 10,001 pounds, the Authority contractually requires passing a DOT physical exam, but the Authority will permit RIDE vendors to utilize the medical exemption process below for Vehicle Operators who do not pass the DOT physical exam and, if RIDE vendors do so, RIDE vendors will be considered to have satisfied their contractual requirements with regard to medical certifications for Vehicle Operators of vehicles less than 10,001 pounds.

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## Medical Exemption Process

Any Vehicle Operator / Applicant of sedans or other vehicles with a GVWR of less than 10,001 pounds who fails the DOT physical exam will be notified that he/she can seek an exemption through his/her primary care physician. The Vehicle Operator / Applicant must provide his/her primary care physician with the medical record from the DOT physical exam stating the reason for the failure, all medical documentation, if any, that he/she provided to the physician conducting the DOT physical exam, a Description of Services and Job Responsibilities, and the Certification Form (attached).

If the primary care physician executes the Certification Form, certifying that he/she has: 1) reviewed the required documentation; 2) understands the reason for the DOT physical exam failure; 3) determined that despite the DOT physical exam failure, in his/her professional medical opinion, the Vehicle Operator / Applicant can safely discharge his/her job responsibilities as described in the Description of Services and Job Responsibilities<sup>2</sup>; and; 4) the Vehicle Operator's / Applicant's medical history reflects that the Vehicle Operator is compliant, and has a history of compliance, with all prescribed medications impacting his/her ability to drive then, upon submission of a completed Certification Form, said Vehicle Operator / Applicant will be considered exempt.

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<sup>2</sup> If the primary care physician believes that the Vehicle Operator should be re-evaluated sooner than two years from the date of the exam, the physician should so indicate on the Vehicle Operator / Applicant Exemption Certification Form and provide a schedule for reexamination and/or recertification.

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## DOT Medical Exemption Form

I, Dr. \_\_\_\_\_, in my professional medical opinion based on my training and experience and my review the attached documentation, hereby certify as follows:

1. I understand that the reason \_\_\_\_\_ (Vehicle Operator / Applicant Name) failed a DOT physical exam is due to \_\_\_\_\_; and

Despite that failure, in my professional medical opinion, the Vehicle Operator / Applicant **can safely discharge** their job responsibilities as described in the attached Description of Services and Job Responsibilities. Vehicle Operator / Applicant should be evaluated again in two years.

OR

Despite that failure, in my professional medical opinion, the Vehicle Operator / Applicant **can safely discharge** their job responsibilities as described in the attached Description of Services and Job Responsibilities, but **periodic monitoring is required**. Vehicle Operator / Applicant is qualified **only for the following period**:

3 months

6 months

1 year

Vehicle Operator / Applicant should be **evaluated again at the end of the period**.

OR

In my professional medical opinion, the Vehicle Operator / Applicant **cannot safely discharge** their job responsibilities as described in the attached Description of Services and Job Responsibilities.

2. In my professional medical opinion, the Vehicle Operator's / Applicant's medical history reflects that the Vehicle Operator / Applicant is compliant, and has a history of compliance, with all prescribed medications impacting their ability to drive.

AGREE

DISAGREE

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name/Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Medical Facility: \_\_\_\_\_

Facility Address: \_\_\_\_\_