Parts 382 & 40

Alcohol and Drug Testing Requirements

Consortium Information

Part 382
Alcohol and Drug Testing Requirements

Applicability

Drivers required to have a commercial driver's license (CDL) are subject to the controlled substance and alcohol testing rules. This requirement extends to those drivers currently covered by the rule, including interstate and intrastate truck and motor coach operations.
This includes all commercial motor vehicles operated by:

- For-hire and private companies
- Federal, state, local, and tribal governments
- Church and civic organizations
- Apiarian industries

Exemptions

- Drivers exempt from commercial driver's license requirements by their issuing State
- Active duty military personnel

Part 382 Definitions

382.107 Definitions

"Positive Drug and Alcohol Tests" –

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)

"Positive rate for random drug testing" – means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (i.e., positives, negatives, and refusals) under this part.

"Refusal to submit (to an alcohol or controlled substance test)" - a driver (1) fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing, (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing, or (3) engages in conduct that clearly obstructs the testing process.

"Safety-sensitive function" - any of those on-duty functions set forth in 395.2 On-Duty Time, paragraphs (1) through (6) as listed below:

1) All time at a carrier or shipper plant, terminal, facility, or other property, waiting to be dispatched, unless the driver has been relieved from duty by the employer.
2) All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations (FMCSR's), or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.
3) All time spent at the driving controls of a commercial motor vehicle.
4) All time, other than driving time, spent on or in a commercial motor vehicle (except for time spent resting in the sleeper berth).
5) All time loading or unloading a commercial motor 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.
6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Additional definitions may be found in 49 CFR, Part 40 and Part 382.

Types of Alcohol and Controlled Substance Tests

Pre-employment: No employer shall allow a driver to perform a safety sensitive function until they have received the negative controlled substance test result.

Random: Companies are to scientifically and randomly test drivers at a minimum annual percentage rate of 10% of the number of drivers for alcohol testing, and 50% for controlled substances testing. The random alcohol test must be performed prior, during or just after a driver is about to, or has performed a safety sensitive function as defined in Section 382.107. All drivers must have an equal chance of selection.

Type of Accident Involved	Citation Issued to the CMV Driver	Test Must be Performed by Employer
i. Human fatality	YES	YES
	NO	YES
ii. Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
iii. Disabling damage to any motor vehicle requiring tow away	YES	YES
	NO	NO

Post-accident: As soon as practicable following an accident involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for alcohol and controlled substances of each surviving driver: Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or Who receives a citation under state or local law for a moving traffic violation arising from the accident, if the accident involved: Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

Post-accident alcohol testing must be conducted as soon as practicable following an accident. If testing cannot be completed within 2 hours, documentation must be maintained stating the reasons the test was not promptly administered. Testing shall not be conducted beyond 8 hours following an accident with documentation stating reasons the test could not be conducted.

Post-accident controlled substance testing must be conducted as soon as practicable following an accident. If the test is not administered within 32 hours, the employer shall cease attempts to administer the test. Documentation stating the reason a test could not be conducted shall be maintained.

Reasonable suspicion: An employer shall require a driver to submit to an alcohol and/or controlled substance test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions concerning alcohol and/or controlled substances. The employer's determination that reasonable suspicion exists to require the driver to undergo an alcohol and/or controlled substance test must be based on specific, contemporaneous, articulate observations concerning the appearance, behavior, speech or body odors of the driver. The required observations shall be made by a supervisor or company official who is trained in accordance with Section 382.603 (Supervisor Awareness Training).

Return-to-duty: Each employer shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part concerning alcohol or controlled substances, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 or the driver shall undergo a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use.

Follow-up: If a substance abuse professional has determined that a driver needs assistance for the misuse of alcohol, or for use of a controlled substance, an employer must ensure that the driver is subject to follow-up testing. A minimum of six tests must be conducted in the first 12 months, and the driver may only be subject to this test for a maximum of 60 months.

Retention of Records

Five Years:

- Alcohol test results indicating a Breath Alcohol Concentration (BAC) of 0.02 or greater
- Verified positive drug test results
- Refusals to submit to required alcohol and drug tests
- Required calibration of Evidential Breath Testing (EBT) devices

Two Years:

- Records related to the collection process and required training

One Year:

- Negative and canceled controlled substance test results
- Alcohol test results indicating a BAC of less than 0.02

Location of Records

All required records shall be maintained in a secure location with limited access, and shall be made available for inspection by an authorized representative of the Federal Motor Carrier Safety Administration.

Driver Awareness

Every motor carrier shall provide educational materials explaining the requirements of the regulations as well as the employer's policies regarding alcohol misuse and controlled substances abuse. At a minimum, detailed discussions should include:

- The identity of the person designated to answer drug and alcohol questions
- Which drivers are subject to these requirements, what behavior is prohibited, and a clarification of what a "safety sensitive function" is
- The circumstances under which a driver will be tested, and the procedures that will be used for testing
- Explanations of the requirement that a driver submit to the testing, as well as what constitutes a driver's refusal to submit to testing
- The consequences for drivers who have violated the testing requirements
- Information concerning the effects of alcohol misuse, and controlled substances abuse on health, work, and personal life

Supervisor Training

Each employer shall ensure that all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing under Section 382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. Recurrent training for supervisory personnel is not required. (382.603)

Company Policy

The FMCSA regulations require that a written policy on controlled substances use and alcohol misuse in the workplace be developed and that the policy be provided to every driver. The policy must incorporate the company's position and information on virtually all aspects of controlled substances use and alcohol misuse program (382.601). Policy Components Required by the Controlled Substances and Alcohol Rule (382.601) of the FMCSRs.

Inquiries to Previous Employers

FMCSA's Drug and Alcohol Clearinghouse pre-employment query explained on the following pages will satisfy the inquiries to previous employers requirement for drivers previously employed with FMCSA-regulated employers.

If an applicant was subject to an alcohol and controlled substance testing program under a DOT agency other than FMCSA within three years of application, the inquiry must be requested directly from those agencies.

If you are an employer from whom information is requested under 40.25(b), you must, after reviewing the employee's specific, written consent, immediately release the requested information to the employer making the inquiry. Section 40.25(h):

- Alcohol tests with a result of 0.04 alcohol concentration or greater
- Verified positive controlled substances test results and
- Refusals to be tested
- Other violations of DOT agency drug and alcohol testing regulations
- 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.

Consortium Information

MoDOT Motor Carrier Services Division does not endorse any consortium. You are reminded that your company is responsible for drug and alcohol testing compliance. Evaluate carefully any company retained to provide consortium or laboratory testing services. Some companies provide more limited services.
Be sure that the company selected provides all the services you need to ensure full compliance with the regulations.
To locate a consortium, you may contact one of the many associations dealing with the commercial motor vehicle industry, a hospital, a clinic to provide you with the name of a consortium or a simple search on the internet for DOT drug and alcohol testing.
A web site that may be beneficial as a resource for one of the many associations is www.dot.gov, go to Safety, Drug and Alcohol Safety.

Drug & Alcohol Clearinghouse Mandate

Effective January 6, 2020, all motor carriers employing drivers requiring a CDL must comply with the Drug & Alcohol Clearinghouse Mandate. The Clearinghouse is a secure on-line database which provides access to real-time information, ensuring drivers committing drug and alcohol violations complete the necessary steps before getting back behind the wheel or performing a safety sensitive function.

DACH Clearinghouse URL:

https://clearinghouse.fmcsa.dot.gov/

Motor Carrier Responsibilities:

- Create an account with the Clearinghouse if one or more drivers is subject to the FMCSA drug and alcohol testing requirements
- Owner/operators must create an account with the Clearinghouse and designate a C/TPA to report drug/alcohol violation information on their behalf
- Conduct pre-employment queries to verify prospective drivers do not have prior drug or alcohol violations
- Verify the return to duty process if prior violations are discovered
- Conduct queries of the Clearinghouse at least once a year on current drivers
- Report any drug and alcohol violations discovered on your CDL required drivers
- Continue to conduct a 3 year previous employer inquiry for drug and alcohol violations until January 6, 2023.

What is reported to the Clearinghouse?

- MROs-verified positive, adulterated, or substituted controlled substances test result and refusals to test
- Employers-must be reported by the close of the third business day following the date on which information is obtained:
  - Alcohol concentration of .04 or greater
  - Negative return to duty test
  - Refusal to take an alcohol or controlled substances test
  - A report that the driver has successfully completed the follow-up testing as prescribed in the SAP report
  - Alcohol use-pre-duty, on-duty, and post-accident
  - Controlled substance use
- An owner/operator who employs himself/herself as a driver must designate a C/TPA to comply with the employer requirements.
- C/TPA-An employer may designate a C/TPA to perform the employer requirements. However, ultimately compliance is the employer's responsibility.
- SAPs-must report drivers that have successfully completed education/treatment and is eligible for return to duty testing.

Suggested Format: "Release of Information Form -- 49 CFR Part 40 Drug and Alcohol Testing"

Section I To be completed by the new employer, signed by the employee, and transmitted to the previous employer:

Employee Printed or Typed Name: _____

Employee SS or ID Number: _____

I hereby authorize release of information from my Department of Transportation regulated drug and alcohol testing records by my previous employer, listed in Section I-B, to the employer listed in Section I-A. This release is in accordance with DOT Regulation 49 CFR Part 40, Section 40.25. I understand that information to be released in Section II-A by my previous employer, is limited to the following DOT-regulated testing items:

1. Alcohol tests with a result of 0.04 or higher;
2. Verified positive drug tests;
3. Refusals to be tested;
4. Other violations of DOT agency drug and alcohol testing regulations;
5. Information obtained from previous employers of a drug and alcohol rule violation;
6. Documentation, if any, of completion of the return-to-duty process following a rule violation.

Employee Signature: _____ Date: _____

I-A

New Employer Name: _____

Address: _____

_____

Phone #: _____ Fax #: _____

Designated Employer Representative: _____

I-B

Previous Employer Name: _____

Address: _____

_____

Phone #: _____

Designated Employer Representative (if known): _____

Section II To be completed by the previous employer and transmitted by mail or fax to the new employer:

II-A In the two years prior to the date of the employee's signature (in Section I), for DOT-regulated testing ~

1. Did the employee have alcohol tests with a result of 0.04 or higher? Yes ____ No ____
2. Did the employee have verified positive drug tests? Yes ____ No ____
3. Did the employee refuse to be tested? Yes ____ No ____
4. Did the employee have other violations of DOT agency drug and alcohol testing regulations? Yes ____ No ____
5. Did a previous employer report a drug and alcohol rule violation to you? Yes ____ No ____
6. If you answered "yes" to any of the above items, did the employee complete the return-to-duty process? N/A ____ Yes ____ No ____

NOTE: If you answered "yes" to item 5, you must provide the previous employer's report. If you answered "yes" to item 6, you must also transmit the appropriate return-to-duty documentation (e.g., SAP report(s), follow-up testing record)

II-B Name of person providing information in Section II-A: _____

Title: _____

Phone #: _____

Date: _____

NOTE EXCEPTION: Employers covered under FMCSA regulations must seek three years of previous testing records.

Observed Behavior - Reasonable Cause Record

Employee Name _____
Identification Number

Observation Date _____

Location _____
Street City State Zip

Cause For Suspicion

1) Presence of Drugs and/or Drug Paraphernalia (specify) _____

2) Appearance
- ☐ Normal
- ☐ Flushed
- ☐ Puncture Marks
- ☐ Disheveled
- ☐ Bloodshot Eyes
- ☐ Profuse Sweating
- ☐ Dry-mouth Symptoms
- ☐ Runny Nose/Sores
- ☐ Tremors
- ☐ Dilated/Constricted Pupils
- ☐ Inappropriate wearing of sunglasses
- ☐ Other _____

3) Behavior/ Speech
- ☐ Normal
- ☐ Incoherent
- ☐ Slurred
- ☐ Silent
- ☐ Confused
- ☐ Slowed
- ☐ Whispering
- ☐ Other _____

Awareness
- ☐ Normal
- ☐ Confused
- ☐ Mood Swings
- ☐ Euphoria
- ☐ Lethargic
- ☐ Paranoid
- ☐ Disoriented
- ☐ Lack of Coordination
- ☐ Other _____

4) Motor Skills Balance
- ☐ Normal
- ☐ Swaying
- ☐ Falling
- ☐ Staggering
- ☐ Other _____

Walking & Turning
- ☐ Normal
- ☐ Swaying
- ☐ Arms Raised for Balance
- ☐ Stumbling
- ☐ Falling
- ☐ Reaching for Support
- ☐ Other _____

5) Other Observed Actions or Behavior (specify) _____

_____

_____

Witnessed By

_____ am/pm
Signature Title Date Time

_____ am/pm
Signature Title Date Time

NOTE
This document must be prepared and signed by the witnesses within 24 hours of the observed behavior or before the results of the test are released, whichever is earlier (49 CFR 391.99(d)).