



# Controlled Substances and Alcohol Testing

49 CFR Part 382





# Purpose of Part 382



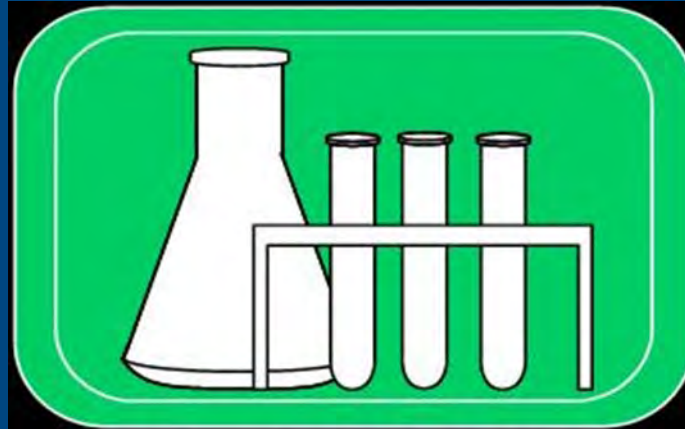
- To establish programs designed to help prevent accidents and injuries resulting from:
  - The misuse of alcohol or
  - The use of controlled substances by drivers of commercial motor vehicles.



# History of Testing Programs



- Controlled Substances testing began in 1989.
- Alcohol testing started in 1996.
- 49 CFR 382.115 requires implementation of these programs before you put your trucks on the road.



# Applicability – 49 CFR 382.103



- Employees in transportation who **operate** commercial motor vehicles requiring a Commercial Drivers License (CDL).
  - Greater than 26,000lbs – Registered weight, gross weight, GVWR – Greatest of any combination. Combination total over 26,000 w/ tow unit over GVWR 10,000lbs.
  - Hazardous materials that require placarding under federal law.
  - Designed or used to carry 16 or more persons including the driver.
- Exemptions:
  - Active-Duty Military
  - Operators of a Farm Vehicle
  - Covered Farm Vehicle

Exemptions in 390.3(f) are not applicable to Part 382



# Definitions – 49 CFR 382.107



- Safety-sensitive employees in transportation who operate commercial motor vehicles requiring a Commercial Drivers License (CDL).
- 49 CFR 382.107 defines Safety Sensitive Function as:
  - All time from the time a **driver** begins to work or in readiness to work until the time he/she is relieved of all responsibility.
  - Safety-sensitive functions shall include all time spent:
    - At an employer or shipper waiting to be dispatched or loaded.
    - Inspecting or servicing CMV equipment;
    - In, upon or driving any CMV except time spent resting in a sleeper berth;
    - Repairing or remaining in attendance upon a disabled vehicle.



# Definitions – 49 CFR 382.107



Actual knowledge means actual knowledge by an employer that a driver has used alcohol or controlled substances based on the employer's **direct observation** of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substance use, except as provided in § 382.121.

Direct observation as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under § 382.307. "traffic citation" means a ticket, complaint, or other document charging driving a CMV while under the influence of alcohol or controlled substances.



# Prohibitions



- No driver shall report for duty or perform a safety-sensitive function while having an alcohol concentration of 0.04 or greater.
  - No person may drive or operate or be on duty time with respect to a commercial motor vehicle under any of the following circumstances:
    - 1. While having an alcohol concentration above 0.0.
- No driver shall use alcohol while on duty or performing a safety-sensitive function.
- No driver shall perform safety-sensitive functions within four hours after using alcohol.
- No driver shall refuse to submit to any required test in 382.301 to 382.307. (post-accident, random, reasonable suspicion, RTD or follow-up)
- No employer shall permit a driver who refuses to submit to such tests to perform safety-sensitive functions.





# Prohibitions



- No driver shall report for duty or remain on duty when the driver uses any controlled substance, except:
  - Under a doctor's orders, and
  - When the driver has been advised by a doctor in writing that the substance will not adversely affect his ability to safely operate a vehicle per 382.107.





# Types of Tests



<u>Test Type</u>	<u>Alcohol</u>	<u>Controlled Substance</u>
Pre-Employment	No	Yes
Post-Accident	Yes	Yes
Random	Yes (10%)	Yes (50%)
Reasonable Suspicion	Yes	Yes
Return to Duty	Yes	Yes
Follow-Up	When required	When required



# Pre-employment Testing (382.301)



- Prior to performing a safety-sensitive function for an employer, drivers shall undergo testing for controlled substances.
- A verified negative test result must be received from the MRO prior to performing a safety-sensitive function.
- An employer is not required to administer pre-employment alcohol tests.



# Post-Accident Testing (382.303)



- If a driver is involved in a reportable crash, they must undergo alcohol and controlled substance testing when:
  - the accident involved the loss of human life; or
  - a citation under State or local law was issued within 8 hours for a moving 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 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 testing (382.303)



- Alcohol tests should be conducted as soon as practicable following the accident.
- If a test is not administered within 2 hours following the accident:
  - shall prepare and maintain a record stating the reasons the test was not administered.
  - Not administered in 8 hours, employer shall cease attempts to administer an alcohol test
- Records shall be submitted to the FMCSA or the State Patrol upon their request.





# Post-accident testing (382.303)



- A controlled substances test should be conducted as soon as practicable following of the accident.
- If the test is not administered within 32 hours the employer must cease attempts and prepare and maintain on file a record stating the reasons the test was not promptly administered.
- A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing.



# Post-accident testing (382.303)



- A motor carrier may accept the results of a breath test for alcohol or urine test for drugs from the law enforcement agency, provided the test conforms to 49 CFR Part 40.
- Warning: Law enforcement administered tests may not meet the requirements for these rules. The employers need to have their own tests conducted in order to comply with these rules.



# Random testing (382.305)



- Every driver is required to submit to random alcohol and controlled substance testing.
  - The minimum annual percentage rate for random alcohol testing shall be **10%** of the average number of driver positions.
  - The minimum annual percentage rate for random controlled substances testing shall be **50%** of the average number of driver positions.
- The selection of drivers for random alcohol and controlled substances testing shall be by a scientifically valid method, such as:
  - a random number table or
  - a computer-based random number generator that is matched with the drivers Social Security number, payroll identification number, or other comparable identifying numbers.



# Random testing (382.305)



- Under the selection process used, each driver shall have an equal chance of being tested each time selections are made.
- The employer shall randomly select a sufficient number of drivers for testing during the calendar year to equal an annual rate (50% for controlled substances 10% for alcohol)
- If the employer conducts random testing through a consortium, the number of drivers to be tested may be calculated for each individual employer or may be based on the total number of drivers covered in the consortium.





# Random testing (382.305)



- The employer must ensure that the tests are:
  - unannounced, and
  - the dates are spread reasonably throughout the calendar year.
- The employer shall require that each driver who is notified of selection to be tested proceed to the test site immediately, even if off-duty (Controlled Substance).
- If the driver is performing a safety-sensitive function (other than driving a CMV) at the time of notification, the employer shall instead ensure that the driver ceases to perform the function and proceeds to the testing site as soon as possible.



# Random testing (382.305)



- A driver shall only be tested for alcohol while the driver is:
  - performing safety-sensitive functions
  - just before he is to perform safety-sensitive functions, or
  - just after he has ceased performing safety-sensitive functions.



# Reasonable suspicion testing (382.307)



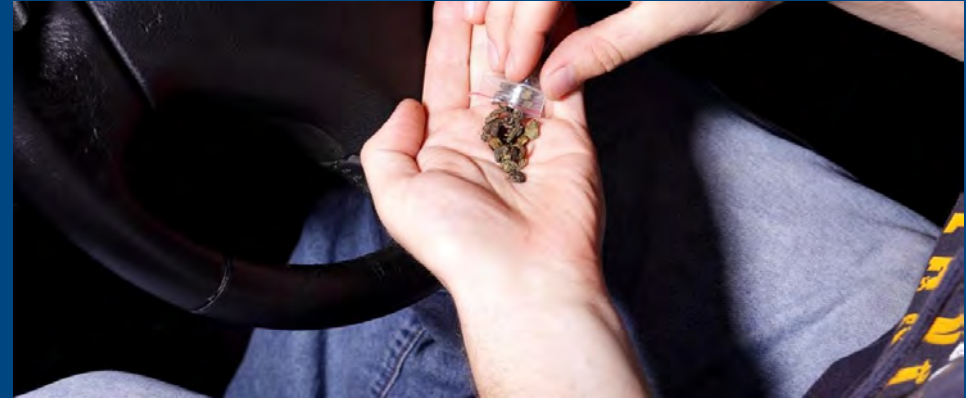
- An employer shall require a driver to submit to alcohol and controlled substances test when the employer has *reasonable suspicion* to believe that the driver is in violation.
- The employer's determination must be based on specific, current observations that can be expressed in clear, explicit language about the driver's:
  - Appearance
  - Behavior
  - Speech, or
  - Body odors



# Reasonable suspicion testing (382.307)



- For controlled substances the observations may include indications of the chronic and withdrawal effects of controlled substances.
- A supervisor or company official must make the required observations and be trained in accordance with §382.603.
- The person who makes the determination that reasonable suspicion exists shall not conduct the test of the driver.





# Reasonable suspicion testing (382.307)



- If an alcohol test required by this section is not administered within 2 hours, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered.
- If an alcohol test is not administered within 8 hours, the employer shall cease attempts and state in the record the reasons for not administering the test.



# Positive Test Result ?!?! (382.605)



- Immediately remove the driver from all safety-sensitive functions!
- Refer the driver to a substance abuse professional (SAP) for evaluation as soon as possible per 382.605. The driver must comply with any SAP's recommended treatment prior to the driver returning to safety-sensitive functions.
- If a determination that a driver is in need of assistance in resolving problems associated with alcohol misuse or controlled substances, each employer shall ensure that the driver is subject to unannounced follow-up testing as directed by a SAP.



# Positive Test Result ?!?! (382.605)



- Each employer shall ensure that before a driver returns to a duty requiring the performance of a safety-sensitive function:
  - For alcohol, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 per 382.309.
  - For controlled substances, the driver must undergo a return-to-duty controlled substances test with a result indicating a verified negative test.



# Positive Test Result ?!?! (382.605)



- All drug test results are reviewed and interpreted by a physician (Medical Review Officer (MRO)) before they are reported to the employer.
- If the laboratory reports a positive result to the MRO, the MRO:
  - contacts the driver (in person or by telephone) and
  - conducts an interview to determine if there is an alternative medical explanation for the drugs found in the driver's urine specimen.
- If the driver provides appropriate documentation and the MRO determines that it is legitimate medical use of the prohibited drug, the drug test result is reported as negative to the employer.





# Employee admission of alcohol and controlled substances use.

- not subject to the referral, evaluation and treatment requirements of this part, provided the driver..
  - admission is in accordance with a written employer-established voluntary self-identification program or policy
  - does not self-identify in order to avoid testing under the requirements of this part
  - admission of use is prior to performing a safety sensitive function
  - does not perform a safety sensitive function until the employer is satisfied that the employee has been evaluated, completed education or treatment requirements in accordance with the self-identification program guidelines



# Retention of Records (382.401)



- Each employer shall maintain records of its alcohol misuse and controlled substances use prevention programs as follows:
  - The records shall be maintained in a secured location with controlled access.



# Retention of Records (382.401)



- Records to be retained for **five years**:
  - Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater
  - Records of driver verified positive controlled substances test results
  - Documentation of refusals to take required alcohol and/or controlled substances test
  - Driver evaluation and referrals
  - Calibration documentation
  - Records related to the administration of the alcohol and controlled substances testing programs, and
  - A copy of each annual calendar year summary required by §382.403.



# Retention of Records (382.401)



- Records to be retained for **two years**:
  - Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices).
- Records to be retained for **one year**:
  - Records of negative and canceled controlled substances test results (as defined in Part 40) and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year.



# Location of Records



- All required records shall be maintained as required by §390.31.
  - All records and documents maintained for the specific periods.
  - Copies are legible and accurately reflect the information required to be contained in the records
- Required records shall be made available for inspection at the employer's principal place of business.





# Annual Summary of Testing (382.403)



- An employer shall prepare and maintain a summary of the results of its testing programs when requested by:
  - the Secretary of Transportation,
  - any DOT agency, or
  - any State or local officials with regulatory authority over the employer or any of its drivers.



# MIS Data Collection Form



**U.S. DEPARTMENT OF TRANSPORTATION DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM**  
Calendar Year Covered by this Report: \_\_\_\_\_ (DOT Form 210-072-001 Rev. 11/85 (Rev. 4/2019))

**I. Employer:**  
Company Name: \_\_\_\_\_  
Doing Business As (DBA) Name (if applicable): \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_  
Name of Certifying Official: \_\_\_\_\_ Signature: \_\_\_\_\_  
Prepared by (if different): \_\_\_\_\_ Date Certified: \_\_\_\_\_ Telephone: ( ) \_\_\_\_\_  
E-mail: \_\_\_\_\_

**C/TPA Name and Telephone (if applicable):** \_\_\_\_\_

**Check the DOT agency for which you are reporting MIS data; and complete the information on that same line as appropriate:**  
 PHMSA - Motor Carrier (DOT # \_\_\_\_\_) Owner-operator (circle one) VTR or NIS - Except (Circle One) YES or NO  
 FAS - Aviation: Certificate (if applicable) \_\_\_\_\_ Plan - Registration (if applicable) \_\_\_\_\_  
 PHMSA - Pipeline: (Check) Gas Gathering \_\_\_\_\_ Gas Transmission \_\_\_\_\_ Gas Distribution \_\_\_\_\_ Transport Hazardous Liquids \_\_\_\_\_ Transport Carbon Dioxide \_\_\_\_\_  
 FRA - Railroad: Total Number of covered documented Part 219 "Rule G" Observations for covered employees \_\_\_\_\_  
 USCG - Maritime: Vessel ID # (USCG- or State-issued) \_\_\_\_\_ (if more than one vessel, list separately)  
 FTA - Transit: \_\_\_\_\_

**II. Covered Employees: (A) Enter Total Number Safety-Sensitive Employees in All Employee Categories:** \_\_\_\_\_  
**(B) Enter Total Number of Employee Categories:** \_\_\_\_\_

**(C)**

Employee Category	Total Number of Employees in this Category

If you have multiple employee categories complete Sections I, II, and IV for each separate employee category.

**III. Drug Testing Data:**

Type of Test	Total Number of Tests Administered (Do not include tests administered to employees in categories 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12)	Validated Negative Results	Validated Positive Results	Positive for Marijuana	Positive for Cocaine	Positive for PCP	Positive for Amphetamines	Positive for Other	Refused Results			
									Substances	Substances	"Stop Testing" - No Specimen Provided	Other Reasons for Refusal to Submit to Testing
Pre-Employment												
Random												
Post-Accident												
Reasonable Suspicion												
Return-to-Duty												
Follow-Up												
TOTAL												

**IV. Alcohol Testing Data:**

Type of Test	Total Number of Tests Administered (Do not include tests administered to employees in categories 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12)	Screening Tests With Results Below 0.02	Screening Tests With Results 0.02 or Greater	Number of Confirmation Tests Administered	Confirmation Tests With Results Below 0.02	Confirmation Tests With Results 0.02 or Greater	Refused Results
Pre-Employment							
Random							
Post-Accident							
Reasonable Suspicion							
Return-to-Duty							
Follow-Up							
TOTAL							



# Drug and Alcohol Testing Policy (382.601)



- Each employer is obligated to promulgate a policy on the misuse of alcohol and use of controlled substances.
- Each employer shall provide educational materials that explain the requirements and the employer's policies and procedures with respect to meeting the requirements.



# Drug and Alcohol Testing Policy (382.601)



- The employer shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing.
- Each employer shall ensure that each driver is required to sign a statement certifying that he or she has received a copy of these materials described in this section.
- The employer shall maintain the original of the signed certificate



# Supervisor Reasonable Suspicion Training (382.603)



- Each employer shall ensure that all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and 60 minutes on controlled substances use.
- The training shall include the following indicators of probable alcohol misuse and use of controlled substances:
  - physical,
  - behavioral,
  - speech, and
  - performance indicators





# Drug and Alcohol Testing Clearinghouse



- The clearinghouse is a database of:
  - Positive drug or alcohol test results and test refusals
  - Drivers that have completed the return-to-duty (RTD) process and follow-up testing plan
- Carriers are required to register and check for entries on all prospective employees per 391.23.
- Drivers must register to grant employers access to the records in the database.



# Types of Queries



- The annual query is a limited query. It will only tell the carrier if there is information in the DACH on the driver.
  - They would then have to run a full query.
- The pre-employment query is a full query.
- The carrier must have permission from the driver to run a query.
- The limited query only requires written permission from the driver.
  - The carrier must have this on file.
- The full query requires the driver to log into the DACH and give permission.







**Motor Carrier Information Line**  
**608-267-9762**

