

## Alcohol and Substance Abuse (Drug) Testing

### Description:

This guide outlines requirements for company written drug and alcohol screening programs and the requirements for commercial motor vehicle (CMV) driver pre-employment drug testing and for random, post-accident and for cause (reasonable suspension) alcohol and substance abuse testing of drivers of CMVs.

### Regulatory Reference

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| 49 CFR PART 40  | PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG TESTING PROGRAMS |
| 49 CFR PART 382 | CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING             |

### Applies to:

The regulations apply to drivers of commercial motor vehicles and their employers.

### General Requirements:

DOT requirements for alcohol and controlled substance testing of drivers of commercial motor vehicles (CMV) as set out in 49 CFR Parts 40 and 382 are complex and specific. Operating companies need to have a responsible person who is thoroughly familiar with the regulations and who can administer the company's compliance program with complete knowledge of company responsibilities and those of related service providers. The program should be closely coordinated with personnel policies that have been reviewed by competent legal counsel.

- (1) Pre-employment testing. 49 CFR § 382.301 requires that prior to the first time a driver performs a safety-sensitive function (including reporting for work, inspecting vehicles, driving a CMV, and other driving tasks), the driver must undergo testing for controlled substances as a condition prior to being used as a driver, and the employer must have received a controlled substance test result from the employer program's designated medical review officer (MRO) or drug and alcohol testing consortium/third party administrator (C/TPA) indicating a verified negative test result for that driver.

If the driver has participated in a controlled substances testing program that conforms to the regulatory requirements within the previous 30 days; and was tested for controlled substances within the previous 6 months, or participated in the program for the previous 12 months; and the employer verifies that no prior employer has records of the driver's violation of drug and alcohol prohibitions of the DOT regulations within the previous 6 months, the employer may use full documentation of those conditions in lieu of pre-employment drug testing. [See 49 CFR § 382.301(b) and (c)(1)]

- (2) Post-accident testing. As soon as practicable following an accident involving a CMV on a public road in commerce, the employer must test the driver for alcohol and controlled substances, if the accident
- (a) involved the loss of human life;
  - (b) resulted in a driver citation for a moving traffic violation within 8 hours of the accident and the accident
    - ▶ resulted in injury to a person that required immediate treatment away from the scene of the accident, or
    - ▶ caused disabling damage to any vehicle requiring towing or removal of the damaged vehicle by another motor vehicle.

Alcohol testing must be done within 2 hours, or the employer must create and maintain on file an explanation of the reasons for not testing promptly. Alcohol testing cannot be administered later than 8 hours after the accident. Drug testing must be administered within 32 hours following the accident. [See 49 CFR § 382.303]

- (3) Random Testing. Employers must ensure that drivers are randomly tested for alcohol and controlled substances on a continuing basis. The required testing rates (currently 50 percent for drugs and 10 percent for alcohol) as set annually by the Administrator of the Federal Motor Carrier Safety Administration is a percentage of the average number of driver positions for the employer. Whether the random selections are made by the employer or by driver a consortium/third party administrator (C/TPA), the employer must ensure that the selection procedures are random, test selections and dates are unannounced (in advance), and are spread reasonably throughout the year. The employer must require that each driver who is notified of selection for random alcohol and/or controlled substance testing goes to the test site immediately. [See 49 CFR § 382.305]
- (4) Reasonable suspicion testing. An employer must require a driver to submit to alcohol or controlled substance testing when the employer has reason to believe that the driver has violated the prohibitions against using controlled substances or alcohol, based on specific, current, and recordable observations concerning the appearance, behavior, speech or body odors of the driver. A supervisor or company official trained in accordance with 49 CFR § 382.603 must make and document the required observations.

49 CFR § 382.207 prohibits drivers from performing safety-sensitive functions within four (4) hours after using alcohol. An employer having actual knowledge that a driver has used alcohol within 4 hours cannot allow that driver to perform or continue to perform safety-sensitive functions. Likewise, an employer having actual knowledge or reasonable suspicion that a driver has used alcohol while performing a safety-sensitive function, or used controlled substances in violation of the DOT alcohol and controlled substances regulations, must require the driver to submit to testing for alcohol or controlled substances as the case may be.

- (5) 49 CFR § 382.105 requires that each employer must ensure that all required alcohol or controlled substances testing conducted complies with the procedures set forth in 49 CFR Part 40. Chain of Custody Forms (CCF) used for documenting urine (drug) testing for DOT must conform to the revised 5-part form published on the Internet at [www.dot.gov/ost/dapc](http://www.dot.gov/ost/dapc). The form cannot be used for non-DOT required testing. The DOT 3-part carbonless Alcohol Testing Form (ATF) must be used for every DOT alcohol test. The ATF form can be found in Appendix G to Part 40, or at the Internet address given earlier in this paragraph.

- (6) Direct Observation Drug Testing. *Effective Date*: August 31, 2009. 49 CFR § 40.23(e) requires an employer who receives a drug test result indicating that the employee's specimen was dilute to take action as provided in §40.197, quoted here in part:
- (a) As the employer, if the MRO informs you that a positive drug test was dilute, you simply treat the test as a verified positive test. You must not direct the employee to take another test based on the fact that the specimen was dilute.
  - (b) As an employer, if the MRO informs you that a negative test was dilute, take the following action:
    - (1) If the MRO directs you to conduct a recollection under direct observation ( *i.e.*, because the creatinine concentration of the specimen was equal to or greater than 2mg/dL, but less than or equal to 5 mg/dL ( see §40.155(c)), you must do so immediately.
    - (2) Otherwise ( *i.e.*, if the creatinine concentration of the dilute specimen is greater than 5 mg/dL), you may, but are not required to, direct the employee to take another test immediately.

[See §40.197 for additional criteria for treatment of follow-up testing and employees.]

49 CFR § 40.23(f) requires an employer who receives a drug test result indicating that the employee's urine specimen test was cancelled because it was invalid and that a second collection must take place under direct observation to ensure that the collector conducts the collection under direct observation.

49 CFR § 40.67(b) states: As an employer, you must direct a collection under direct observation of an employee if the drug test is a return-to-duty test or a follow-up test.

(7) Records.

- (A) The employer must maintain in a secure location the following records with controlled-access (confidential files, separated from other personnel records) for five (5) years:
  - (a) Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater
  - (b) Records of driver verified positive controlled substances test results
  - (c) Documentation of refusals to take required alcohol and/or controlled substance tests
  - (d) Driver evaluation and referrals,
  - (e) Calibration documentation (for evidential breath testing devices)
  - (f) Records related to the administration of the alcohol and controlled substances testing programs (including records supplied by any C/TPA)
  - (g) A copy of each annual calendar year summary required by 49 CFR § 382.403
- (B) The employer must maintain in a secure location the records related to alcohol and controlled substances collection process with controlled access (confidential files, separated from other personnel records) for two (2) years.
- (C) Records of negative and canceled controlled substances test results and alcohol tests results with a concentration of less than 0.02 shall be maintained for a minimum of one (1) year in a secure location with controlled access.
- (D) Records related to the education and training of breath alcohol technicians (BATs), screening test technicians (STTs), supervisors, and drivers shall be maintained by

the employer while the individual performs the functions which require training, and for two years after ceasing to perform those functions.

- (E) All other documents relating to the employer's alcohol and controlled substance program must be maintained as required by 49 CFR § 382.401.
- (8) 49 CFR § 382.601 requires the employer to develop a written policy on the misuse of alcohol and use of controlled substances, and to provide drivers with educational materials that explain the employer's policy and the DOT alcohol and controlled substances regulations. The employer must ensure that each driver is required to sign a statement certifying receipt of the educational materials and the employer's alcohol and controlled substances policy. The policy should clearly identify the company employee who is the designated employer representative (DER), able to receive communications and test results from service agents (C/TPAs and MROs), and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes.
- (9) Employers are no longer required to have a written employee assistance program (EAP), however, under the revised requirements of 49 CFR, Part 40, Subpart O, employers must provide to each employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation a listing of Substance Abuse Professionals (SAPs) readily available to the employee and acceptable to the employer. The list may be provided by the employer or through a C/TPA or other service provider. Employers are not required to provide a SAP evaluation or any subsequent recommended education or treatment for an employee who has violated a DOT drug and alcohol regulation. However, if you offer that employee an opportunity to return to a DOT safety-sensitive duty following a violation, you must, before the employee again performs that duty, ensure that the employee receives an evaluation by a SAP meeting the requirements of § 40.281 and that the employee successfully complies with the SAP's evaluation recommendations.

## **Training Requirements:**

### **Manager/Supervisor Training**

49 CFR § 382.603 states, "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 §382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances."

### **Driver Training**

49 CFR § 382.303(f) states, "An employer shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this section." In addition, drivers must be provided the educational materials required by 49 CFR § 382.601.

### **Service Provider Training**

Specific training and refresher training requirements apply to service providers, including MROs, SAPs, STTs, and BATs. Documentation and certification of current training for C/TPA and other service providers should be maintained in employer program record files.

## **Maintenance and Review**

The company's drug and alcohol program administrator should verify, on a monthly basis for larger employers, or on a quarterly basis for smaller employers, that **driver** random drug testing is being conducted on a 50 percent annualized basis and that random alcohol testing is being conducted on a 10 per cent annualized basis during a calendar year. If the employer operates jurisdictional pipelines non-CMV driver employees and the employees of contractors performing work on the pipelines must be randomly tested for drugs at a rate of 25%. No random alcohol testing is currently required for non-CMV drivers under the pipeline safety regulations.

**Current Random Testing Rates for 2009** as published 8/5/2009 at [www.dot.gov/ost/dapc](http://www.dot.gov/ost/dapc)

The following chart outlines the annual minimum drug and alcohol random testing rates established within DOT Agencies for 2009:

<b>DOT Agency</b>	<b>2009 Random Drug Testing Rate</b>	<b>2009 Random Alcohol Testing Rate</b>
Federal Motor Carrier Safety Administration [FMCSA]	25%	10%
Pipeline & Hazardous Materials Safety Administration [PHMSA]	25%	N/A

Required document files should be checked periodically throughout the year to ensure that they are current, maintained as required, and located in a secured location. Employee records must be kept confidential and access controlled.

If an employer is notified, during the month of January, of a request by the Federal Motor Carrier Safety Administration to report the employer's annual calendar year summary information, the employer shall prepare and submit the report to the FMCSA by March 15 of that year. The employer shall ensure that the annual summary report is accurate and received by March 15 at the location that the FMCSA specifies in its request. The report shall be in the form and manner prescribed by the FMCSA in its request. When the report is submitted to the FMCSA by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. Each employer shall ensure the accuracy and timeliness of each report submitted by the employer or a consortium.

Periodic reviews of driver and supervisor training records should be conducted, and driver certification statements of receipt of company policy and regulatory education materials should be on file for all drivers.

## **Additional Information and Resources**

DOT alcohol and drug testing regulations can be downloaded from the Internet by accessing [www.dot.gov/ost/dapc](http://www.dot.gov/ost/dapc)

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