

# MOTOR CARRIER SAFETY

## PARTS 40/382 – Controlled Substances and Alcohol Use and Testing

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### **Applicability 382.103**

Drivers required to have a commercial driver's license (CDL) under Part 383 are subject to the controlled substances and alcohol testing rules. This requirement includes the following interstate and intrastate truck and bus operations:

- For-hire and private companies.
- Federal, State, local, and tribal governments.
- Church and civic organizations.
- Farmers and custom harvesters.

#### **Exemptions:**

- Drivers exempt from commercial driver's license requirements by their issuing State (e.g., certain farmers).
- Active duty military personnel.

## **DEFINITIONS**

### **Refusal to submit to a test 40.191 / 40.261 / 382.107**

*Refusal to submit* means that a driver:

- Fails to appear for a test (except a pre-employment test) within a reasonable time.
- Fails to remain at the testing site until the test is completed.
- Fails to provide a sufficient amount of urine for a drug test, or breath specimen for an alcohol test, when there is no medical explanation for the failure.
- Fails or declines to take a second test when required.
- Fails to undergo a medical evaluation as part of a verification process.
- Fails to cooperate with any part of the testing process.
- Provides a urine sample determined to be adulterated or substituted.

### **Safety-sensitive function 382.107**

*Safety-sensitive function* means all time from the time a driver begins to work or is ready to work until the time the driver is relieved from work and all responsibility for work. Safety-sensitive functions shall include all time:

- At a plant, terminal, facility, or other property of a motor carrier or shipper.
- Waiting to be dispatched, unless the driver has been relieved from

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duty by the motor carrier.

- Inspecting, servicing, or obtaining assistance for a CMV.
- Driving a CMV.
- In or upon any CMV, except time spent resting in a sleeper berth.
- Loading or unloading a CMV. Performing any other functions related to loading or unloading, including supervising, attending the CMV, or taking care of shipping documents.

### TYPES OF ALCOHOL AND CONTROLLED SUBSTANCES TESTS

**Pre-employment  
382.301**

No employer shall allow a driver, who the employer intends to hire or use, to perform a safety-sensitive function until the driver has received a negative controlled substances test result.

**Post-accident  
382.303**

If a driver is involved in an accident resulting in a fatality, or is cited for a moving traffic violation in connection with an injury or tow-away accident, the employer shall require the driver to submit, as soon as practicable, to controlled substances and alcohol testing. If the driver is not tested for alcohol within *two hours* of the accident, the employer is required to continue attempting to test, but prepare a report explaining the reasons why the test was not promptly administered. If an alcohol test has not been administered within *eight hours* or a controlled substances test within *32 hours* of the accident, the employer shall cease all attempts to test and prepare a report describing the reasons why the test was not promptly administered.

**Random  
382.305**

Companies are to randomly test a number of drivers equal to *10 percent* of the average number of driver positions per year for alcohol testing and *50 percent* for controlled substances. All testing is to be unannounced and reasonably spread throughout the calendar year. All drivers must be scientifically selected for testing and have an equal chance of being selected. A driver shall only be tested for alcohol immediately prior to, during, or immediately after performing a safety-sensitive function.

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**Reasonable suspicion**  
**382.307**

A driver is required to submit to an alcohol and/or controlled substances test when a properly trained company official or supervisor has observed and documented the driver's behavior that may indicate alcohol or controlled substance abuse. The company official or supervisor must have received two hours of training on abuse recognition, as prescribed by 382.603, prior to requiring a reasonable suspicion test.

**Return-to-duty / Follow-up**  
**40.305 / 40.307**

Return-to-duty and follow-up tests are conducted when a driver, who has violated the prohibited controlled substances or alcohol conduct standards, returns to performing safety-sensitive functions. See PROHIBITIONS below.

### PROHIBITIONS

**Subpart B - Prohibitions**  
**382.201 - 382.215**

The following are identified as Subpart B – Prohibitions:

- Performing a safety-sensitive function while having an alcohol concentration of 0.04 or greater.
- Using alcohol while performing a safety-sensitive function.
- Performing a safety-sensitive function within 4 hours after using alcohol.
- Using alcohol within 8 hours following an accident, before taking a DOT-required post-accident alcohol test.
- Refusing to take a DOT-required alcohol or controlled substances test.
- Using controlled substances while performing a safety-sensitive function.
- Performing a safety-sensitive function after testing positive or adulterating or substituting a test specimen for controlled substances.

A driver who has violated a Subpart B prohibition cannot perform any safety-sensitive duties until that driver has completed a Substance Abuse Professional (SAP) evaluation, referral, and education/treatment process. The first step in this process is a SAP evaluation.

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## EVALUATION AND TESTING

<b>SAP Evaluation</b> 382.503 / 40.281 - 40.313	The Substance Abuse Professional conducts face-to-face evaluations of the driver to determine what education and/or treatment program is required.
<b>Return-to-Duty Test</b> 382.309 / 40.305	Upon completion of the education and/or treatment program prescribed by the SAP, the driver must take a return-to-duty test for controlled substances and/or alcohol with a negative test result, before the driver can return to safety-sensitive duties.
<b>Follow-up Testing</b> 382.311 / 40.307 / 40.309	The driver must take at least <i>six</i> unannounced follow-up tests for controlled substances and/or alcohol in the first 12 months of safety-sensitive duties, above and beyond any random testing requirements. The SAP may prescribe more follow-up tests during the first 12 months and/or subsequent to that.
<b>Other alcohol-related conduct</b> 382.505	A driver found to have an alcohol concentration between 0.02 and 0.04 shall not perform safety-sensitive functions for at least 24 hours.

## RECORD RETENTION

<b>Retention of records</b> 382.401	An employer shall maintain all records related the controlled substances and alcohol program in a secure location with limited access, made available within two business days to any authorized government personnel. The records shall be kept on file based on the following retention periods:
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**Five years:**

- All records related to any violations of the controlled substances or alcohol standards described in Subpart B.  
*Examples:* positive test results, SAP evaluations.
- Records related to the administration of the program.

**Two years:** Records related to the collection process.

**One year:** Negative and canceled test results.

**Indefinite period:** Training records.

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### COMPANY POLICY

**Company Policy  
382.601**

Every motor carrier shall provide each driver with educational materials on controlled substances and alcohol that include, but are not limited to:

- Which drivers are subject to the requirements, and who is responsible for providing information.
- What behavior is prohibited and what constitutes a refusal to test.
- The circumstances and time period under which a driver will be tested and the procedures involved. What constitutes a safety-sensitive function.
- 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. \*
- The signs and symptoms of alcohol or controlled substances problems.

\* *See also Driver Wellness training in Parts 380.500 to 380.513.*