

Controlled Substances and Alcohol Use Testing Regulations

Presented by | Rich Moldstad, CDS
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QUESTIONS

Please send questions to rich.moldstad@cb-sisco.com.



Drug and Alcohol Testing Regulations

49 CFR, Part 382 governs motor carriers

49 CFR, Part 40 covers duties of lab, MRO, collection site

Rules apply to all CDL holders

6 types of tests may be required



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Required Tests

- Pre-employment (Controlled Substances Test only)
- Post Accident
- Random
- Reasonable Suspicion
- Return to Duty
- Follow-Up



Previous Employer Inquiries

Information released to an employer **MUST** be maintained in writing

Previous employer **MUST** immediately release information after reviewing written consent

QUESTIONS

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Previous Employer Inquiries

Employer **MUST** ask an applicant about pre-employment tests or refusals during the previous three years in which the applicant did not obtain a job

If the applicant had any positive tests or refusals, the applicant **MUST** have documented completion of the return-to-duty process



Pre employment test (382.301)

Test for controlled substances only.

Must have negative result before driver performs any safety sensitive functions.



Post Accident Testing (382.303)

Following an accident involving a CMV, each employer shall test each surviving driver for alcohol and controlled substances when either:

- The accident involved a fatality; or
- The accident involves an injury or tow-away, and the driver receives a citation for a moving violation

QUESTIONS

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Post Accident Testing (*Employer Responsibilities*)

- Require alcohol test within two (2) hours;
- Cease attempts to alcohol test driver after eight (8) hours;
- Require driver to submit to a controlled substances test within 32 hours following the accident.



Random Testing (382.305)

- Test for controlled substance at annual rate of 50 percent of the average number of driver positions
- Test for alcohol at annual rate of 10 percent of average number of driver positions
- Recommended to always test at higher rates to ensure compliance



Random Testing

The random alcohol test must be given immediately before, during or after a driver performs a safety sensitive function (including driving)

All drivers must have an equal chance of selection by a scientifically valid method, such as:

- Random number table
- Computer based random selection

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Reasonable Suspicion Testing Supervisors

- Observations must be made by at least one trained supervisor or company official (382.603)
- 60 minutes on Alcohol misuse
- 60 minutes on Controlled substances misuse
- Address the physical, behavioral, speech, and performance indicators of probable alcohol misuse and the use of controlled substances.
- Once in a lifetime documentation of training must be maintained



Reasonable Suspicion Testing (382.307)

Reasonable suspicion testing may be administered any time while the driver is on duty.

Maintain written record of observations leading to the test.

Suspicion **MUST** be based on specific observations of the supervisor or company official concerning the driver's:

- Behavior
- Speech
- Body odor (such as marijuana or alcohol)



Employer Responsibilities

Immediately remove employee from safety sensitive functions (or until return to duty process is completed if allowed) after receipt of:

- Positive drug test results
- Verified tainted or substituted drug test results
- Alcohol test greater than .04





Positive Drug Tests

- A positive drug test disqualifies employee from performing safety sensitive functions.
- Company must decide consequences, i.e. terminate, suspend, etc.



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Refusal to Submit

No driver shall refuse to submit to a required test

No employer shall permit a refusing driver to perform safety sensitive functions



Substance Abuse Professional

40.281 Who is qualified to act as a SAP?

When is referral to a SAP required?



Return-To-Duty Testing

An employer shall ensure that before a driver returns to duty:

- Driver's return-to-duty alcohol test indicates an alcohol concentration of less than 0.02
- Driver's return-to-duty controlled substances test indicates a negative result





Follow-Up Testing

- Substance Abuse Professional will set up a follow-up testing plan
- Return to Duty test
- Employer MUST ensure that the plan is carried out
- A minimum of 6 tests MUST be conducted in the first 12 month



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Drug and Alcohol Statistical Summaries

Appendix B – Part 40

- Semi-annual statistical summaries should be provided to the motor carrier.
- If in a consortium, the carrier must still obtain a statistical summary to prove the consortium was in compliance with testing requirements.



Record Retention

Employer shall maintain records of alcohol misuse and controlled substance use prevention programs

Records shall be maintained in a secure location with controlled access



Record Retention

Records kept for two years

- Records related to the collection process

Records kept for one year

- Negative or cancelled drug test results
- Alcohol test results showing a 0.02 BAC or less

Records kept indefinitely

- Education and training records



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Record Retention

Records kept for 5 years

- Alcohol test results showing a 0.02 BAC or greater
- Positive drug test results
- Refusals to submit to required tests
- Driver evaluations and referrals
- Required calibration of breath testing devices
- Copy of each calendar year summary



Employer Obligations

Materials shall be given to each driver before the start of alcohol and controlled substance testing

Educational materials also provided



Questions?



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