

Controlled Substances and Alcohol Use Testing Regulations

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Presented By | Del Shannon, Safety Consultant

Cottingham & Butler

PRESENTER



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WELCOME

- Send your questions to “send privately”.
- Questions will be answered by email following the presentation.
- Supporting information for this Webinar will be emailed out after the presentation.

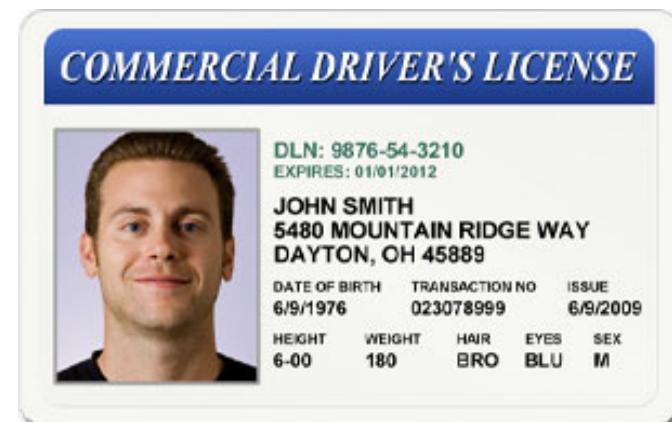
DRUG AND ALCOHOL TESTING REGULATIONS

49 CFR, Part 382 governs motor carriers

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

Rules apply to persons who operate a **CMV** in commerce and subject to CDL requirements.

6 types of tests may be required





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



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

RELEASE AND DOCUMENTATION OF PRE-EMPLOYMENT TESTING INFORMATION BY DRIVER/APPLICANT

Date: _____

Dreiver/Applicant: _____

TO BE COMPLETED BY DRIVER/APPLICANT per §40.25(j)

During the past (2) two years, have you tested positive on a pre-employment test administered by an employer to which you applied for, but did not obtain, safety transportation work covered by the Dept. of Transportation (DOT) drug and alcohol rules? (Circle One) YES NO

have you refused to test on a pre-employment drug and alcohol test administered by an employer to which you applied for, but did not obtain, safety transportation (DOT) drug and alcohol rules? (Circle One) YES NO



PRE EMPLOYMENT TEST (382.301)

Test for controlled substances only.

DOT drug tests require laboratory testing (49 CFR Part 40 Subpart F) for the following five classes of drugs:

1. Marijuana
2. Cocaine
3. Opiates – opium and codeine derivatives
4. Amphetamines and methamphetamines
5. Phencyclidine – PCP

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.



POST ACCIDENT TESTING (*EMPLOYER RESPONSIBILITIES*)

"As soon as practicable," test for both drugs & alcohol.

Prepare and maintain on file a record stating the reasons the **alcohol** test was not promptly administered

Prepare and maintain on file a record stating the reasons the **alcohol** test was not promptly administered

Cease attempts to administer an **alcohol** test

Prepare and maintain on file a record stating the reasons the **drug** test was not promptly administered

Cease attempts to administer a **drug** test



Hours

POST ACCIDENT TESTING

A driver is involved in a crash that does not result in any fatalities but his truck is towed due to disabling damage. The driver is released by the officer on the scene and did not receive a citation. Per DOT regulations, could the carrier require the driver to submit to both a DOT post-accident drug and alcohol test following the crash?

- A. No. **Only a drug** test can be administered.
- B. Yes. Although post-accident criteria was not met, the tests should be conducted **just to be safe**. The driver could later receive a citation.
- C. Yes. With the information provided, **both** DOT tests are **required**.
- D. No. Both tests are **not authorized** by the DOT.



RANDOM TESTING (382.305)

- Test for controlled substance at annual rate of 25* 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 (382.305)

1st Quarter = 120 drivers

2nd Quarter = 110

3rd Quarter = 120

4th Quarter = 130

Sum = 480

480/4 = 120 average

120 x 0.10 (alcohol) = 12 drivers

120 x 0.25 (drug) = 30 drivers



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

RANDOM TESTING



5 FEDERAL	Primary: 382.305(k)(2)	Discovered 8	Checked 8	Drivers/Vehicles In Violation Checked
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Description

Failing to ensure that random testing dates are reasonably spread throughout the calendar year.

Example

Driver Edward , Trip date of 12/03/2014

382.305(i)(3): Each driver selected for testing shall be tested during the selection period.

Driver Selected	Testing Quarter	Test Date
Kevin Statz	1 st Quarter	April 4, 2017

NON COMPLIANCE



REASONABLE SUSPICION TESTING SUPERVISORS

- Observations must be made by at least one **trained** supervisor or company official (382.603)

Training should last at least:

- A. 60 minutes for alcohol and 60 for controlled substances
 - B. 30 minutes for alcohol and 30 for controlled substances
 - C. 60 minutes combined for alcohol and controlled substances
 - D. Bologna! Minimum time is not specified in the regulations
-
- 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.





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

POSITIVE TEST

What is an employer required to provide an employee who has just received a DOT drug or alcohol test that is positive?

- A. A termination letter
- B. A listing of readily available SAPs
- C. Light-duty employment
- D. A last meal
- E. A drive home





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





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.

DRUG AND ALCOHOL STATISTICAL SUMMARIES

STATEMENT OF COMPLIANCE DOT RANDOM TESTING PROGRAM

[REDACTED] Transportation LLC

Client Code: 000002

Random Pool: XFRI
DOT Mode: FMCSA
Random Rates: 25% / 10%

Average Employee Count: 27

Drug Tests Completed: 7

Alcohol Tests Completed: 3

Per DOT regulation, this employer has been part of a random testing program for controlled substances and alcohol. As part of a random testing pool, selections have been made based on the average number of safety-sensitive positions in the pool using a scientifically valid computerized random selection process in which each covered individual has an equal probability of selection.

This report is documentation that testing in this random pool has been completed to meet the minimum testing rates of the applicable DOT Operating Agency for the testing period identified herein.

Program Administered by [REDACTED]

Testing Period Start Date: 1/1/2016

Testing Period End Date: 12/31/2016

Report Date: 2/15/17



DO NOT DISCARD

Please file this important document with your drug and alcohol testing records for the testing period listed above. This document may be required during a DOT AUDIT or review.

For questions or program details, please contact a Compliance Specialist at 1-800-[REDACTED]

Our office hours are Monday - Friday, 8:30 - 5:00 EST.

Authorized By: _____

Vice President, Operations

Communication Code: O-SOC-1-1

DOT RANDOM TESTING PROGRAM ANNUAL POOL STATISTICS

[REDACTED] Trucking Company Inc

Gramercy, LA 70052

Client Code:
Random Pool: XFTC
DOT Mode: FMCSA
Target Rates: 25% / 10%

Average Employee Count: 44

Drug Tests Completed: 11

Alcohol Tests Completed: 4

Per DOT regulation, this employer has been part of a random testing program for controlled substances and alcohol. As part of a random testing pool, selections have been made based on the average number of safety-sensitive positions in the pool using a scientifically valid computerized random selection process in which each covered individual has an equal probability of selection.

Program Administered by [REDACTED]

Testing Period Start Date: 1/1/2016

Testing Period End Date: 12/31/2016

Report Date: 2/17/17

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Please file this important document with your drug and alcohol testing records for the testing period listed above. This document may be required during a DOT AUDIT or review.

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Our office hours are Monday - Friday, 8:30 - 5:00 EST.

Authorized By: _____

Vice President, Oper

Communication Code: C



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





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

Per § 382.601 “Employer obligation to promulgate a **policy** on the **misuse of alcohol and use of controlled substances**,” each employer is required to:

- A. ~~Read the policy to each employee~~
- B. Provide each driver a copy of the policy.
- C. Require each driver to sign a certificate certifying that he or she has received a copy.
- D. ~~Mail a copy of the policy to the driver's spouse.~~

6 FEDERAL	Primary: 382.601(b)	Discovered 11	Checked 11	Drivers/Vehicles In Violation 11	Checked 11
Description Failing to provide to employees a written policy on misuse of alcohol and controlled substances that meets the requirements of 382.601(b) 1-11.					
Example Driver Edward , interstate trip date 12/03/2014.					

QUESTIONS?



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