



## Section 09: Controlled Substances and Alcohol Testing Requirements

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### Controlled Substances and Alcohol Testing Requirements

#### 49 CFR Parts 382 and 40

Controlled substances and alcohol testing regulations are designed to prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of Commercial Motor Vehicles (CMVs). The controlled substances and alcohol testing regulations are found in the Federal Motor Carrier Safety Regulations Parts 40 and 382. These regulations are applicable to most motor carriers and drivers of CMVs required to have a CDL operating in interstate and/or intrastate transportation.

#### **Commercial Motor Vehicle (CMV) Definition for Commercial Drivers**

**Licenses:** A CMV is defined as a vehicle or combination of vehicles used in commerce to transport passengers or property that:

- Has a gross combination weight rating (GCWR\*) or gross combination weight (GCW) of 26,001 or more pounds, whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating (GVWR)\*\* or gross vehicle weight (GVW)\*\*\*, whichever is greater, of more than 10,000 pounds; or
- Has a GVWR\*\* or GVW\*\*\*, whichever is greater, of 26,001 or more pounds; or
- Is designed to transport 16 or more passengers, including the driver; or
- Is of any size and is used in the transportation of hazardous materials (HM) that requires the vehicle to be placarded.

*\*GCWR means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle.*

*\*\*GVWR means the value specified by the manufacturer as the loaded weight of a single motor vehicle. The GVWR can typically be found on the manufacturer's VIN plate.*

*\*\*\*GVW means the actual weight of the vehicle plus the weight of the load.*

#### **Drivers/Carriers Subject to the Controlled Substances and Alcohol Testing**

**Requirements:** Employers are required to have controlled substances and alcohol testing programs and procedures in place to ensure that drivers who operate CMVs which require a commercial driver's license (CDL) to operate are tested for controlled substances and/or alcohol use/misuse. The controlled substances and alcohol testing requirements apply to the following groups:

- For-hire carriers
- Private carriers
- Federal, state, local governments, political subdivisions and tribal governments
- School bus operations
- Church and civic organizations

An employer who is also as a driver must comply with both the requirements that apply to the employer and the driver.

**Drivers/Carriers Not Subject to Controlled Substances and Alcohol Testing Regulations:** The following drivers/carriers are not subject to the controlled substances and alcohol testing regulations:

- Those required to comply with the controlled substances and alcohol regulations applicable to Transit Operations (49 CFR Part 655);
- Those who a state must waive from CDL requirements\*;
- Those who a state may exempt from the CDL requirements\*\*; or
- Drivers of Covered Farm Vehicles (See Section 20 for definition).

*\*Active duty military personnel, members of the reserves, members of National Guard and active duty US Coast Guard personnel.*

*\*\*Operators of farm vehicles owned and controlled by a farmer hauling the farmer's products when used within 150 mile radius of the farm and operators of authorized emergency vehicles.*

**Alcohol Prohibitions:** A CMV driver shall not:

- Report for duty or remain on duty to perform safety-sensitive functions with an alcohol concentration of 0.04 or greater;
- Use alcohol while performing safety-sensitive functions;
- Use alcohol during the 4 hours before performing safety-sensitive functions;
- Use alcohol after being involved in a crash in which the driver is required to take a post-accident test for up to 8 hours after the crash or until the driver undergoes a post-accident test, whichever occurs first; or
- Refuse to submit to a required alcohol test.

**Controlled Substances Prohibitions:** A CMV driver shall not:

- Report for duty or remain on duty to perform safety-sensitive functions when the driver uses any drug\* or controlled substance;
- Report for duty or remain on duty to perform safety-sensitive functions if the driver tests positive for controlled substances; or
- Refuse to submit to a required controlled substances test.

*\*Except for Non Schedule I prescription medications that are used in accordance with a medical practitioner's instructions and when the medical practitioner has advised the driver that the medication will not adversely affect the driver's ability to safely operate a CMV.*

Employers having first-hand actual knowledge that a driver has used alcohol or a controlled substance shall not permit the driver to drive or perform safety-sensitive functions. Actual Knowledge means knowledge by an employer that a driver has used alcohol or a controlled substance based on the employer's direct observation of the employee. This includes:

- Information provided by the driver's previous employer(s); or
- A traffic citation for driving a CMV while under the influence of alcohol or a controlled substance or an employee's admission of alcohol or controlled substance use, except admission in accordance with a written employer-established voluntary self-identification program or policy.

A driver cannot self-identify alcohol or controlled substance use under an employer's established voluntary self-identification program or policy in order to avoid any testing required by the carrier's controlled substances testing and alcohol program.

**Establishing a Controlled Substance and Alcohol Testing Program:** A carrier may administer their own controlled substances and alcohol testing program or may contract with outside service providers and/or consortiums to assist with administration of the carrier's controlled substance and alcohol testing program. Frequently contracted services include development of a company policy, selection of subjects for random testing, locating collection sites and testing/analysis services. If an employer contracts with an outside service provider and/or consortium, the employer is still responsible for ensuring compliance with the controlled substance and alcohol testing regulations.

**Company Policy and Educational Materials:** Employers must provide educational materials to each driver, each newly hired driver or an employee transferred into a position requiring driving of a CMV. The educational materials must explain the controlled substance and alcohol testing requirements and the employer's policies and procedures.

**Type of Tests Required:** The controlled substances and alcohol testing regulations require the following types of tests:

- pre-employment tests (controlled substances only),
- random tests,
- post-accident tests,
- reasonably suspicion tests,
- return-to-duty tests,
- follow-up tests.

**Testing Process:** Alcohol tests must be conducted on alcohol-testing devices approved by the National Highway Traffic Safety Administration. Controlled substance tests/analysis must be conducted by laboratories certified by the Substance Abuse and Mental Health Services Administration. These laboratories are often separate from the actual collection site. A Federal Drug Testing Custody and Control Form (CCF) must be completed for every controlled substance test specimen collected. The CCF will accompany and document the test specimen's handling/transfer to the laboratory where it is tested.

**Test Results:** If an alcohol test result is 0.02 or higher, the test administrator must immediately notify the employer's designated employer representative (DER) by telephone or secure electronic means.

All controlled substance test results must be forwarded to a medical review officer (MRO) who will verify the test results. If a controlled substance test result is positive, the MRO will attempt to contact the driver and determine if there is a legitimate medical explanation for the positive test result. The MRO will report the verified test result to the employer's Designated Employee Representative by telephone or secure electronic means. For a positive test result, the MRO's report to the DER will identify what controlled substance was found by the test.

**Required Training for Supervisors:** Each employer shall ensure that all persons designated to supervise CMV drivers receive 60 minutes of training on controlled substance use and an additional 60 minutes of training on alcohol misuse. The training is used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo reasonable suspicion testing. Employers are required to maintain documentation relating to supervisory training. Recurrent training for supervisory personnel is not required. An owner/operator who is an employer and the only employee is not required to comply with the supervisory training requirements.

**Consequences for Engaging in Controlled Substances and/or Alcohol Prohibitions:** A driver who engages in any prohibited conduct for Controlled Substances or Alcohol must:

- Not perform, nor be permitted to perform, a safety-sensitive function including driving a CMV that:
  - has a GVWR or GVW >10,000 pounds,
  - is designed or used to transport more than 8 passengers (including the driver) for compensation,
  - is designed or used to transport more than 15 passengers (including the driver) and is not for compensation, or
  - is a vehicle of any size transporting hazardous materials which require the vehicle to be placarded;
- Be referred to a substance abuse professional (SAP) who will make a clinical evaluation and determine what assistance is needed by the employee, refer the employee to an appropriate education or treatment program and conduct a follow-up evaluation; and
- Undergo a return-to-duty test.

**Other Consequences for Alcohol-related Conduct:** A driver tested for alcohol and found to have an alcohol concentration of 0.02 or greater but less than 0.04 must be removed from the performance of safety-sensitive functions until the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

**Record keeping:** Each employer must maintain records related to the administration of their alcohol and controlled substance testing program. All alcohol and controlled substance test records/results must be maintained in a secure location with controlled access. Carriers must make all records related to the administration of their testing programs and individual test results available to agencies with regulatory jurisdiction.

**National Drug and Alcohol Clearinghouse:** On January 6, 2020, the FMCSA will begin a new clearinghouse that is a secure online database giving employers, FMCSA, State Driver Licensing Agencies, and State law enforcement personnel real-time information about CDL driver drug and alcohol program violations. For more information, please visit FMCSA’s website at <https://clearinghouse.fmcsa.dot.gov/Learn>.

**Definitions:**

“Alcohol” means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

“Alcohol use” means the consumption of any beverage, liquid mixture, or preparation (including medication) that contains alcohol.

**“Controlled Substances” means:** Marijuana; Cocaine; Opiates (Opium and Codeine derivatives; Amphetamines and Methamphetamines; and Phencyclidine (PCP).

The US Department of Transportation’s Federal Motor Carrier Safety Administration (FMCSA) expanded its drug testing panel to include four synthetic opioid drugs: hydrocodone, hydromorphone, oxycodone, and oxymorphone. These substances are more commonly known as Vicodin, OxyContin, Lorta, Norco, and Dilaudid, among others.

“Safety-sensitive function” means all time from the time a driver begins to work or is required to be in readiness to work until the time they are relieved from work and all responsibility for performing work. Safety-sensitive functions include:

- All time spent at a carrier’s or shipper’s plant, terminal, facility, or other property waiting to be dispatched, unless the driver has been relieved of duty by the employer;
- All time spent inspecting equipment, servicing, or conditioning any CMV at any time;
- All time spent at the driving controls of a CMV;
- All time, other than driving time, in or upon any CMV except time spent resting in a sleeper berth;
- All time loading or unloading a CMV, supervising or assisting in loading or unloading, or remaining in readiness to operate the CMV, or giving/receiving receipts for shipments loaded or unloaded; and

- All time repairing, obtaining assistance, or remaining in attendance upon a disabled CMV.

## **Controlled Substances and Alcohol Testing Program Implementation Checklist:**

- ✓ Do you have at least one person familiar with the controlled substances and alcohol testing requirements?
- ✓ Do you have written company policies and procedures describing your company's alcohol and controlled substances testing program?
- ✓ Have you informed employees in writing of the company's alcohol and controlled substances use and misuse policy and its implementation?
- ✓ Have you provided educational materials relating to the effects of alcohol and controlled substance use and abuse to your affected employees?
- ✓ Have you identified which job positions need to be tested?
- ✓ Have you selected qualified personnel to implement and monitor your program?
- ✓ Does your program include testing for the five prohibited controlled substances: marijuana, cocaine, opiates, amphetamines and phencyclidine?
- ✓ Have you established or contracted for a secure specimen collection site with appropriately trained personnel and clearly written procedures?
- ✓ Have you established or contracted with a certified laboratory to analyze specimens?
- ✓ Have you designated a qualified Medical Review Officer to review and report test results and serve as custodian of individual test records?
- ✓ Have you contracted with qualified alcohol testing technicians to conduct alcohol tests?
- ✓ Does your program include pre-employment controlled substances testing?
- ✓ Does your program include random, reasonable suspicion, post-accident, return to duty and follow-up testing for alcohol and controlled substances?
- ✓ Have you identified substance abuse professionals and rehabilitation resources for referral?
- ✓ Have you made arrangements for a minimum 120 minutes of training (60 minutes controlled substances and 60 minutes alcohol) for supervisors required to make reasonable suspicion determinations?
- ✓ Have you made record keeping and reporting provisions? Do they protect the right to privacy and prevent unauthorized release of test results?