



CITY OF
GULF BREEZE
— 1961 —

DOT FMCSA POLICY

Reviewed June 2022

DOT SUBSTANCE AND ALCOHOL MISUSE POLICY

Federal Motor Carrier Safety Administration (FMCSA)

Overview

City of Gulf Breeze, also referred to as "the company" has a firm commitment to provide all employees with a safe and drug/alcohol-free work environment. In order to accomplish this goal, the company has implemented this policy, which will provide the necessary guidelines and procedures to augment measures taken in the past to achieve a drug/alcohol-free workplace.

Within this context a drug and alcohol testing program, designed to help prevent accidents and injuries resulting from the misuse of drugs and alcohol, will be inaugurated on the effective date of this policy. All safety sensitive employees are subject to the provisions of this policy and will be alcohol and drug tested, accordingly.

All employees (and applicants for employment) that perform duties covered by DOT regulations are covered by these policies and procedures **IN ADDITION TO** any and all other company policies and procedures related to alcohol and drug use.

§382.103 Applicability

Company employees subject to the provisions of this policy, are those who hold a commercial driver's license (CDL) and include, but not limited to:

- full time regularly employed drivers.
- casual, intermittent, or occasional drivers.
- leased drivers and volunteers.
- independent owner-operator contractors who are either directly employed by or under lease to or who operate commercial motor vehicles (CMV's) at the direction of or with the consent of the Company.

Participation

The employer's-controlled substances and alcohol testing program is a requirement of each driver/employee, and therefore, is a condition of employment or use.

Required Hours of Compliance

Time periods during which drivers must be in compliance with the alcohol rule:

- A driver must not consume alcohol while on duty (382.205), four hours prior to on duty time (382.207), and up to eight hours following an accident or until the employee undergoes a post-accident test, whichever occurs first (382.209).
- A driver shall not report for duty or remain on duty that requires performing safety-sensitive functions when the driver uses any controlled substance, except when the use is at the instruction of a physician who has advised the driver that the substance does not adversely affect the ability to safely operate a CMV (382.213).

Prohibited Behavior

The Department of Transportation (DOT) defines the restrictions for the use of both alcohol and controlled substances. The Federal Motor Carrier Safety Administration (FMCSA) further defines drug/alcohol use restrictions for CMV drivers:

Alcohol Use §382.201-209

Since alcohol is a legal substance, the prohibitions for its use are closely tied to the performance of safety-sensitive functions. For those who hold a commercial drivers' license (CDL), a safety-sensitive function refers to: anytime the driver is driving, inspecting, servicing, unloading or loading a vehicle.

The FMCSA regulation prohibits a driver with an alcohol concentration of 0.04 or greater to perform any safety-sensitive functions until the driver has been evaluated by a SAP, completed the program and has passed a return-to-duty test.

A driver with an alcohol concentration of 0.02 or greater but less than 0.04, must be removed from duty for 24 hours. If an alcohol testing device is unavailable, the employer is required to remove the driver from performing safety sensitive functions until 24 hours have elapsed. The employer is prohibited from taking additional action under FMCSA authority against a driver based solely on the driver's behavior and appearance. The company may have, however, additional policies under the company's own authority.

Prohibitions for Alcohol:

- ✓ A driver may not report to duty or stay on safety-sensitive duty (a) with an alcohol concentration of 0.02 or greater, (b) while in possession of alcohol (unless it is being transported), (c) if using alcohol; or (d) within four (4) hours of using alcohol.
- ✓ A driver may not perform a safety-sensitive function who has a concentration of 0.04 or greater for any DOT employer until an evaluation by a SAP and has completed the recommended treatment.
- ✓ A driver who has had an accident may not use alcohol until post-accident testing is done or for a period of eight (8) hours, whichever comes first.
- ✓ Drivers cannot refuse to submit to alcohol testing. The company reserves the right to take disciplinary action against any driver who refuses to be tested.

Controlled substance use § 382.213

- ✓ No driver shall report for duty or remain on duty requiring the performance of safety sensitive functions when the driver uses any drug or substance identified in 21 CFR 1308.11 Schedule I.
- ✓ No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any non-Schedule I drug or substance that is identified in the other Schedules in 21 CFR part 1308 except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in § 382.107, who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.
- ✓ No employer having actual knowledge that a driver has used a controlled substance shall permit the driver to perform or continue to perform a safety-sensitive function.
- ✓ An employer may require a driver to inform the employer of any therapeutic drug use.

Prior DOT Employer Checks for Drug and Alcohol Testing Records
49 C.F.R. 382.413/40.25/382.701/391.23

382.413 (a) Employers must request alcohol and controlled substances information from previous employers in accordance with the requirements of §40.25 of this title, except that the employer must request information from all DOT-regulated employers that employed the driver within the previous 3 years and the scope of the information requested must date back 3 years.

(b) As of January 6, 2020, employers also use the Drug and Alcohol **Clearinghouse** in accordance with §382.701(a) to comply with the requirements of §40.25 of this title with respect to FMCSA-regulated employers. Exception: When an employee who is subject to follow-up testing has not successfully completed all follow-up tests, employers must request the employee's follow-up testing plan directly from the previous employer in accordance with §40.25(b)(5) of this title.

(c) If an applicant was subject to an alcohol and controlled substance testing program under the requirements of a DOT Agency other than FMCSA, the employer must request the alcohol and controlled substances information required under this section and §40.25 of this title directly from those employers regulated by a DOT Agency other than FMCSA.

§40.25 an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in **paragraph (b)** of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for you for the first time (i.e., a new hire, **an employee transfer into a safety-sensitive position**). If the employee refuses to provide this written consent, you must not permit the employee to perform safety-sensitive functions.

(b) You must request the information listed in this paragraph (b) from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer:

- (1) Alcohol tests with a result of 0.04 or higher alcohol concentration.
- (2) Verified positive drug tests.
- (3) Refusals to be tested (including verified adulterated or substituted drug test results).
- (4) Other violations of DOT agency drug and alcohol testing regulations; and
- (5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), you must seek to obtain this information from the employee.

391.23 Investigation and inquiries.

(e) In addition to the investigations required by paragraph (d) of this section, the prospective motor carrier employers must investigate the information listed below in this paragraph from all previous DOT regulated employers that employed the driver within the previous three years from the date of the employment application, in a safety-sensitive function that required alcohol and controlled substance testing specified by 49 CFR part 40.

(f)(1) A prospective motor carrier employer must provide to the previous employer the driver's consent meeting the requirements of §40.321(b) of this title for the release of the information in paragraph (e) of this section. If the driver refuses to provide this consent, the prospective motor carrier employer must not permit the driver to operate a commercial motor vehicle for that motor carrier.

(2) If a driver refuses to grant consent for the prospective motor carrier employer to query the Drug and Alcohol **Clearinghouse** in accordance with paragraph (e)(4) of this section, the prospective motor carrier employer must not permit the driver to operate a commercial motor vehicle.

NOTE: January 6, 2023 - Once three years of violation data are stored in the Clearinghouse, employers are no longer required to also request information from the driver's previous FMCSA-regulated employers under 391.23(e); an employer's query of the Clearinghouse will satisfy that requirement.

Required Testing:

There are five situations in which testing can be done to determine the presence of alcohol and/or drugs. Here is a brief description of each:

Pre-employment Testing

Pre-employment testing for drugs is required:

- Before a new hire is permitted to perform any safety-sensitive function.
- When a person transfers into a safety-sensitive function from elsewhere in the company that is non-safety-sensitive.
- If a driver is removed from a random testing pool for more than 30 days, he must again be pre-employment tested.
- Pre-employment testing for alcohol is permitted only if it applies to all CDL drivers.

382.701(a) §382.701 Drug and Alcohol Clearinghouse

(a) **Pre-employment query required.** (1) Employers must not employ a driver subject to controlled substances and alcohol testing under this part to perform a safety-sensitive function without first conducting a pre-employment query of the **Clearinghouse** to obtain information about whether the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of §382.211; or that an employer has reported actual knowledge, as defined at §382.107, that the driver used alcohol on duty in violation of §382.205, used alcohol before duty in violation of §382.207, used alcohol following an accident in violation of §382.209, or used a controlled substance, in violation of §382.213.

(2) The employer must conduct a full query under this section, which releases information in the **Clearinghouse** to an employer and requires that the individual driver give specific consent.

Post-accident Testing

Post-accident drug and alcohol testing is required:

- Following an accident where there is a fatality.
- A driver receives a citation and there is bodily injury requiring medical treatment away from the scene.
- A driver receives a citation, and a vehicle is towed away from the scene.

NOTE: Post-accident alcohol testing should be done within two (2) hours of the accident. If it

cannot be done within eight (8) hours, it should not be done.

NOTE: Employees must submit to post-accident drug testing within 32 hours.

Random Testing

Unannounced random testing of the company employees engaged in safety-sensitive functions will be done each year. Drivers, who are randomly selected from a pool, must be tested just before, during or immediately after performing a safety-sensitive function. Random testing is done on a percentage basis:

- Ten percent (10%) of the Random Pool must be tested for alcohol annually.
- Fifty percent (50%) of the Random Pool must be randomly tested for controlled substances annually.

Reasonable Suspicion

Drug and/or alcohol testing can be performed if a company management official or supervisor has reasonable suspicion to believe that a covered employee's behavior or appearance may indicate drug or alcohol use.

The determination to test for reasonable suspicion must be based on:

- The observation of a trained supervisor or company official who has received the training required by the alcohol and drug ruling (supervisor training).
- Specific, clearly stated observations concerning the appearance, behavior, speech or body odors of the driver.
- Observations made just before, during or just after the performance of safety-sensitive functions.

Return-to-duty and Follow-up Testing

A driver who violates this policy and/or federal requirements for continuing to perform safety-sensitive functions. The employer must order direct observation for Return-to-duty collections.

The following test results are required:

- An alcohol concentration of less than 0.02
- A verified negative controlled substances test

The employer must order direct observation for Follow-Up collections when the driver does return to a safety-sensitive function. The federal rules and this policy call for a minimum of six (6) unannounced tests during the first year back in a safety-sensitive position and can extend up to five years as recommended by the Substance Abuse Professional.

Refusals

- **Alcohol or Controlled Substance Testing** - A refusal to be tested for alcohol or controlled substances constitutes a violation and the company reserves the right to take additional disciplinary actions against a driver who refuses to be tested. Any invalid test results of an employee who admits tampering with or adulterating their test are treated as a refusal to be tested. Such behavior includes refusal to take the test (382.211); inability to provide sufficient quantities of breath, saliva, or urine to be tested without a valid medical explanation; tampering with or attempting to adulterate the specimen; interfering with the collection procedure; not immediately reporting to the collection site; failing to remain at the collection site until the collection process is complete; having a test result reported by an MRO as adulterated or substituted; or leaving the scene of an accident without a valid reason before the tests have been conducted. See the definition of "Refuse

to Submit" in 382.107.

- **Limited or Full Clearinghouse Query Consent-** If a driver refuses to provide consent for their company to conduct a **“Limited Query”** of the Clearinghouse, the company must prohibit them from performing safety-sensitive functions, including driving a commercial motor vehicle, as required by FMCSA’s drug and alcohol program regulations. If a **“Limited Query”** returns that records were found, a **“Full Query”** must be conducted on a driver within 24 hours or the driver must be removed from safety-sensitive functions. If the consent is **“Refused”** the query cannot be conducted and the driver is removed from safety sensitive functions.
- **Prospective Motor Carrier Consent** - If a driver **refuses** to grant consent for a prospective motor carrier employer to query the Drug and Alcohol Clearinghouse the prospective motor carrier employer must not permit the driver to operate a commercial motor vehicle.

Consequences of the Use of Controlled Substances and the Misuse of Alcohol

A driver who has violated any of the prohibitions concerning alcohol misuse with a concentration of 0.04 or greater or controlled substances use, including a refusal to be tested, will be removed from any safety-sensitive function, and will not be allowed to return to a safety-sensitive function with the company until an evaluation by a Substance Abuse Professional (SAP) has been done and any recommended treatment has been completed. The company reserves the right to take disciplinary action against an employee who violates these alcohol/drug prohibitions.

Consequences for Drivers with an Alcohol Concentration of 0.02 or Greater but Less Than 0.04

- Any driver who has an alcohol concentration of 0.02 or greater but less than 0.04 shall not perform or continue to perform safety-sensitive functions until 24 hours following the administration of the test (382.505).
- No other action can be taken under FMCSA or DOT authority against the driver based solely on test results showing an alcohol concentration of less than 0.04. This does not prohibit the employer with authority independent of FMCSA regulations from taking any action otherwise consistent with the law (382.505(b)).
- No action shall be taken under FMCSA or DOT authority against the driver based solely on test results showing an alcohol concentration of less than 0.02. Alcohol concentration results of less than 0.02 are considered negative for the purposes of this employer testing program. No employer may penalize a driver based on a test result of less than 0.02 alcohol concentration conducted under Federal requirements.

Substance Abuse

Refers to patterns of use that result in health consequences or impairment in social, psychological, and occupational functioning.

Evaluation by a Substance Abuse Professional (SAP) – A SAP is a licensed physician or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors (NAADAC)] with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders. A SAP is the person who evaluates employees who have violated a DOT drug and alcohol program regulation and makes

recommendations concerning education, treatment, follow-up testing, and aftercare. Before a SAP can report any information to the **Clearinghouse**, the SAP must be designated by a driver on the **Clearinghouse**. FMCSA noted a driver should establish a relationship with a SAP prior to designating them in the **Clearinghouse**. The SAP will have to accept the driver's request through the **Clearinghouse**. Per § [382.705\(d\)](#), a SAP must report the following information about a driver's RTD process to the Clearinghouse: (1) the date of the initial SAP assessment, and (2) the date the SAP determines that the driver is eligible for RTD testing, due to completion of the education/treatment plan. SAPs do not upload the education/treatment plan, reports, or any other information to the Clearinghouse. This information must be provided to the driver's employer outside the Clearinghouse, using the same means as before January 6, 2020.

Testing Procedures

Alcohol Testing Procedures and Employee Safeguards

Breath Alcohol Technician (BAT):

A "breath alcohol technician" is an individual who instructs and assist individuals in the alcohol testing process and operates an "evidentiary breath testing" device (EBT). The BAT is required to be properly trained, as follows:

1. Proficiency shall be demonstrated by successful completion of a course of instruction which, at a minimum, provides training in the principals of EBT methodology, operation, and calibration checks; the fundamentals of breath analysis for alcohol content; and the procedures required in this part for obtaining a breath sample, and interpreting and recording EBT results.
2. Only courses of instruction for operation of EBT's that are equivalent to the Department of Transportation (DOT) model course, as determined by the National Highway Traffic Safety Administration (NHTSA), may be used to train BAT's to proficiency.
3. The course of instruction shall provide documentation that the BAT has demonstrated competence in the operation of the specific EBT(s) he/she will use.
4. Any BAT who will perform an external calibration check of an EBT shall be trained to proficiency in conducting the check on the particular model of EBT.
5. The BAT shall receive additional training, as needed, to ensure proficiency, concerning new or additional devices or changes in technology that he or she will use.
6. The company will establish documentation of the training and proficiency test of each BAT it uses to test the Company employees.

NOTE: A BAT-qualified supervisor of an employee may conduct the alcohol test for that employee only if another BAT is unavailable.

Evidential Breath Testing (EBT) Device:

A device used for alcohol breath testing on ODAPC's Web page for "Approved Evidential Breath Measurement Devices". An EBT used for a screening test of a company employee will be capable of printing out results and numbering each result sequentially. A logbook may also be kept.

The EBT used will have a Quality Assurance Plan (QAP) developed by the manufacturer and approved by NHTSA. The company will remove from service any EBT that fails a calibration check as set forth in the QAP.

Breath Alcohol Testing Form/Logbook:

An alcohol testing form, published by the Department of Transportation (DOT) will be used to

ensure the integrity of the test result, properly identify the employee with the test result, and serve as a documented record of the testing event.

The logbook, if used, will become additional documentation of the testing event by providing a sequential test number, date, name of BAT, location of test, quantified test result and initials of the employee each test.

Preparation for Testing:

Alcohol testing will be conducted in a location that affords, to the greatest extent practicable, visual and aural privacy to the company employee being tested. The employee is required to show positive identification (picture I.D.) to the BAT and may request the BAT to also show positive identification. The BAT must supervise only one employee's use of the EBT at a time and must not leave the testing site while the test is in progress.

Screening Test Procedure:

After the employee has been positively identified, the alcohol screening test procedure will be conducted, as follows:

1. The employee will provide the STT or BAT with identifying information and employer information to be entered on the Breath or Saliva Alcohol Testing Form. The employee will be asked to certify, by signature, that the information provided is correct. A refusal by an employee to sign the certification will be regarded as a refusal to take the test.
2. An individually sealed mouthpiece will be opened in view of the employee and attached to the EBT or ASD.
3. The BAT will instruct the employee to blow forcefully into the mouthpiece for at least six (6) seconds or until the EBT indicates that an adequate amount of breath has been obtained.
4. After showing the employee the quantitative alcohol concentration results printed out by the EBT or ASD, the BAT will enter the results, test number, testing device, serial number of the EBT, time, and date on the proper section of the Breath or Saliva Alcohol Testing Form. The BAT may also record the test number, date, name of BAT, location, and quantified test result in the logbook. The employee will then initial the logbook.
5. Depending on whether the result is less than 0.02 or greater, the following procedures will be done:
 - a. If the result is less than 0.02, the BAT or STT will date the form and sign the certification to the effect that all procedures were followed as required by DOT regulations. No further testing is required. The BAT will transmit the result of less than 0.02 to the company designated official in a confidential manner, and the company official will receive and store the information to ensure that confidentiality is maintained. The employee will receive a copy of the alcohol form.

NOTE: Failure of the employee to sign the alcohol test form or initial the logbook after a test has been conducted will be noted by the BAT in the remarks section of the alcohol form.

NOTE: If a test result printed by the EBT does not match the displayed result, the BAT shall note the disparity in the remarks section, both BAT and employee will initial the remarks. The test result will be considered invalid, and the employee and the company will be so

notified.

- b. If the result is 0.02 or greater, a confirmation test will be performed. If the confirmation test will be performed by a different BAT, the BAT who conducted the screening test will complete and sign the form and logbook entry. The BAT will give the employee a copy of the alcohol form.

Confirmation Testing Procedures:

If a different BAT is conducting the confirmation test, the new BAT will require positive identification of the employee, explain the testing procedure, and initiate a new Breath Alcohol Testing Form, requiring a repetition of information and certification by signature. In addition, the following instructions must be followed:

1. The BAT will instruct the employee not to eat, drink, or put any object or substance in his or her mouth for at least fifteen (15) minutes. The BAT will explain that the reason for these instructions is to ensure against an artificially high reading. The BAT will note in the "Remarks" section of the form any non-compliance with instructions.
2. The confirmation test will be conducted within twenty (20) minutes of the completion of the screening test.
3. A new mouthpiece will be opened and used for the confirmation test.
4. Before the confirmation test is administered for each employee, the BAT will ensure that the EBT registers 0.00 on an air blank. If the reading is greater than 0.00, after two attempts, that EBT will not be used for testing.

NOTE: Any EBT taken out of service because of failure to register 0.00 on an air blank will not be returned to service until an external calibration is conducted and the EBT is, once again, to be found within tolerance limits.

5. In the event that the screening and confirmation test results are not identical, the confirmation test result is to be deemed to be the final result upon which any action will be taken in compliance with federal rules or the company authority.
6. The BAT will affix the confirmation test printout to the alcohol test form using tamper-evident tape.
7. Following completion of the test, the BAT will date and sign the form. The employee will also sign the certification statement at the designated place.

NOTE: The refusal of the employee to sign the alcohol form will not defeat the test result but will be noted by the BAT in the "Remarks" section.

NOTE: Disparity between the displayed result and the printed result will be "noted", signed by employee and BAT, and will be considered an invalid test.

8. The BAT will conduct an air blank. If the reading is greater than 0.00, the test is invalid.
9. The BAT will transmit all results to the company in a confidential manner. The BAT will ensure immediate transmission to the company of results that require the company to prevent an employee from performing a safety-sensitive function.
10. The company will designate one or more representatives for the purpose of receiving and handling alcohol testing results in a confidential manner. All communications by BAT's to the company concerning the alcohol testing results of employees will be to the designated company representative.

Employee Test Information:

The company will maintain employee test information records in a secure manner, so that disclosure of information to unauthorized persons does not occur. Employee test information will only be released as required by law or as expressly authorized. The release of employee test information is allowed in the following instances:

1. An employee will have access to any of his/her alcohol testing records upon written request.
2. The company will allow any DOT-authorized agency access to facilities and records in connection with the company alcohol misuse prevention program.
3. When requested, the company will disclose post-accident testing information to the National Transportation Safety Board (NTSB) as part of an accident investigation.
4. The company may disclose information to the employee or to a decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee.
5. The company will release information regarding an employee's alcohol testing records as directed by the specific, written consent of the employee authorizing release of the information to an identified person.

Drug Testing Procedures and Employee Safeguards

Chain of Custody (C.O.C.):

The company employee drug testing program will utilize a clear and well-documented procedure for collection, shipment, and accession of urine specimens from the specimen collection site to the laboratory. For this purpose, a standard drug testing chain of custody and control form (C.O.C.) will be used.

Definition of Chain of Custody (C.O.C.):

Federal regulations define "chain of custody" in the following way: "Procedures to account for the integrity of each urine or blood specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen."

The C.O.C. Form:

The drug testing custody and control form (C.O.C.) is used to document the chain of custody to the laboratory. These forms are multiple-part carbonless forms to allow for copies to be retained by the laboratory, to be shared by the MRO, the employee, and the company designated representatives. These forms will be maintained as a permanent record on which all necessary identifying data and the collection process are retained.

Preparation for Testing:

In addition to using a custody and control form, other safeguard procedures, in preparation of testing, include:

1. Use of clean, single use specimen bottle.
2. Use of a tamper proof seal system.
3. Use of a shipping container that can be sealed and initialed after depositing both specimen and C.O.C. documentation.
4. Written procedures and instructions for collection site person.

Written Procedures:

The written procedures for the collection site person emphasize that the collection site person is responsible for maintaining the integrity of the specimen collection and transfer process.

Unless it is impractical for any other individual to perform this function, a direct supervisor of an employee will not serve as the collection site persons for testing purposes. In any case, where a collection is monitored or directly observed, the collection site person will be of the same gender as the employee/donor.

Specimen Collection: Security Procedures

The collection site will be a secure location, closed to allow for maximum privacy. Security procedures require restricted access to collection materials and specimens. No unauthorized personnel will be permitted access to the collection site. No one other than the collection site person may handle specimens prior to their being placed securely in the mailing container.

To minimize the chance of error, the collection site person will collect only one specimen at any given time. The collection procedure for each specimen is completed when the urine bottle has been sealed and initialed, the custody and control form has been executed, and the employee has departed the collection site.

Laboratory Analysis:

In compliance with the FMCSA/DOT drug testing regulations, the company will only authorize laboratories certified by the Department of Health and Human Services (DHHS) to be used for the analysis of urine specimen drug testing program. Laboratories are required to test every DOT specimen for specimen validity (possible adulterants and urine substitutes) and follow DHHS protocols for doing so.

Certified laboratories, so utilized by the company, will take security measures to ensure accurate identification of each specimen. Internal chain-of-custody forms will be used at all times to track each specimen from the time it is received to the time it is destroyed.

NOTE: See Appendix A for more information on initial screening and confirmation testing.

Reporting of Results:

The certified laboratory, chosen by the company to analyze urine specimens of covered employees, will report the test results directly to the company designated Medical Review Officer (MRO). Both positive and negative results will be reported in a secure and confidential manner, and never verbally.

The report, as certified by the responsible laboratory individual, will indicate the drug/metabolites tested for, whether the results are positive or negative, the specimen number signed by the company and the drug testing laboratory identification number. Only specimens confirmed by GC/MS testing as positive are reported as positive.

The laboratory will also transmit to the MRO the original or certified copy of the chain-of-custody and control form and will identify the individual at the laboratory responsible for the day-to-day management of the laboratory process.

Medical Review Officer (MRO):

A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the company's drug testing program. The MRO must have knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate an individual's confirmed positive test, medical history, and other relevant biomedical information.

Review of Results / MRO:

The Medical Review Officer (MRO), designated by the company to review drug test results, will be a fully licensed physician and possess a knowledge of drug abuse disorders. It is the primary responsibility of the MRO to review and interpret positive results obtained from the laboratory. The MRO will assess and determine whether alternate medical explanations could account for the positive test results.

To accomplish this task, the MRO may conduct medical interviews of the individual, review the individual's medical history and review any other relevant bio-medical factors. Additionally, the MRO will examine all medical records and data made available by the tested individual, such as evidence of prescribed medications. The MRO will not consider any drug test results that arise from urine collection or analysis which do not comport with FMCSA/DOT regulations. The MRO will give the individual testing positive an opportunity to discuss the test results prior to making a final decision. After the final decision is made, the MRO will notify the company.

Testing of Split Sample:

The MRO will notify each employee who has a confirmed positive test that the employee has seventy-two (72) hours in which to request a test of the split specimen. If the employee makes such a request, the MRO will direct, in writing, the laboratory to provide the split specimen to another certified laboratory for analysis. If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or unsuitable, the MRO will cancel the test and report cancellation and the reason for it to the DOT, the company, and the employee.

MRO Unable to Contact Employee:

If the company's designated MRO, after making and documenting all reasonable efforts is unable to contact a tested employee, the MRO will contact a designated management official of the company to arrange for the individual to contact the MRO prior to going on duty. The MRO may verify a positive test, a refusal to test because of adulteration or substitution, or as cancelled because the test was invalid, without having communicated with the employee about the results of the test if:

1. The driver expressly declines the opportunity to discuss the results of the test, or
2. Within five (5) days after a documented contact by a designated management official of the company instructing the employee to contact the MRO, and the employee has not done so.
3. After 10 days of documented reasonable efforts by the MRO and DER have been unable to contact the employee.

Clearinghouse Reporting:

MRO Clearinghouse Reporting— Medical Review Officers are required to report controlled substance violations to the Clearinghouse. Reporting includes verified positives and MRO Refusal to test determinations. MRO determinations of an adulterated or substituted test result will be reported as a Refusal to take a drug test. MRO submission of a violation will generate a notification to the driver. A violation will remain in the Clearinghouse for 5 years or until the RTD process is completed, whichever is later. The MRO will receive a confirmation transaction ID from the Clearinghouse when submitting information on a driver.

Employer Clearinghouse Reporting Requirements:

Controlled Substance

- Refusal to take a drug screen not requiring determination by the MRO as specified in 49 CFR 40.191.
- Actual knowledge of use of a controlled substance as defined in 49 CFR 382.107.
- Negative RTD test results for drugs and the successful completion of a driver's follow-up testing plan.

Alcohol

- Alcohol test results with a concentration of .04 or greater.
- Employer determinations of refusals to take an alcohol as specified in 49 CFR 40.261.
- Actual knowledge of use of alcohol as defined in 49 CFR 382.107.
- Negative RTD tests results for alcohol and the successful completion of a driver's follow-up testing plan.

Referral, Evaluation, and Treatment:

The FMCSA/DOT drug testing rules, following the Omnibus Act of 1991, require drivers be provided with an opportunity for alcohol or drug abuse treatment. The rules, however, do not require that the employer pay for rehabilitation or hold a job open for a driver.

Specifically, the alcohol and drug ruling require:

1. That the drivers who violate alcohol or drug prohibitions be advised of the resources available to evaluate and resolve the problem.
2. That the driver be evaluated by a substance abuse professional (SAP) to determine what assistance is necessary.
3. That before returning to safety-sensitive duties a driver must:
 - a. produces a return-to-duty alcohol test of 0.02 alcohol concentration or less if violation was alcohol related; and/or produce an observed verified negative return-to-duty controlled substances test if violation was drug related.
 - a. if assistance was recommended, the driver must be follow-up evaluated by a Substance Abuse Professional (SAP) to determine if treatment recommendations were followed.
 - b. be subject to a minimum of six (6) unannounced observed follow-up tests within the first year back to work.

NOTE: Observed Follow-up testing can be required for up to five (5) years after return to work.

The following are words or phrases used in this part are defined in §386.2 and 390.5 of this subchapter and §40.3 of this title, except as provided in this section—

§382.107 Definitions.

Actual knowledge for the purpose of subpart B of this part, means actual knowledge by an employer that a driver has used alcohol or controlled substances based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substance use, except as provided in §382.121. Direct observation as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under §382.307. As used in this section, "traffic citation" means a ticket, complaint, or other document charging driving a CMV while under the influence of alcohol or controlled substances.

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

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part.

Alcohol use means the drinking or swallowing of any beverage, liquid mixture, or preparation (including any medication), containing alcohol.

Commerce means:

(1) Any trade, traffic, or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States; or

(2) Trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (1) of this definition.

Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse) means the FMCSA database that subpart G of this part requires employers and service agents to report information to and to query regarding drivers who are subject to the DOT controlled substance and alcohol testing regulations.

Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle.

(1) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or

(2) Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 or more pounds), whichever is greater; or

(3) Is designed to transport 16 or more passengers, including the driver; or

(4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

Confirmation (or confirmatory) drug test means a second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite.

Confirmation (or confirmatory) validity test means a second test performed on a urine specimen to further support a validity test result.

Confirmed drug test means a confirmation test result received by an MRO from a laboratory.

Consortium/Third party administrator (C/TPA) means a service agent that provides or coordinates one or more drug and/or alcohol testing services to DOT-regulated employers. C/TPAs typically provide or coordinate the provision of a number of such services and perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members (e.g., having a combined random testing pool). C/TPAs are not "employers" for purposes of this part.

Controlled substances mean those substances identified in §40.85 of this title.

For purposes of this policy, the terms "drugs" and "controlled substances" are interchangeable and have the same meaning unless otherwise specified, these terms refer to:

Marijuana metabolites

Cocaine metabolite

Codeine

Morphine

Hydrocodone/

Hydromorphone

Oxycodone

Oxymorphone

6-Acetylmorphine

Phencyclidine

Amphetamine/

Methamphetamine

MDMA/MDA

Designated employer representative (DER) is an individual identified by the employer as able to receive communications and test results from service agents 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. The individual must be an employee of the company. Service agents cannot serve as DERs.

Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusions*. Damage to motor vehicles that could have been driven but would have been further damaged if so driven.

(2) *Exclusions*. (i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlight or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which make them inoperative.

DOT Agency means an agency (or “operating administration”) of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing (14 CFR parts 61, 63, 65, 121, and 135; 49 CFR parts 199, 219, 382, and 655), in accordance with part 40 of this title.

Driver means any person who operates a commercial motor vehicle. This includes, but is not limited to: Full time, regularly employed drivers; casual, intermittent, or occasional drivers; leased drivers and independent owner-operator contractors.

Employer means a person or entity employing one or more employees (including an individual who is self-employed) that is subject to DOT agency regulations requiring compliance with this part. The term, as used in this part, means the entity responsible for overall implementation of DOT drug and alcohol program requirements, including individuals employed by the entity who take personnel actions resulting from violations of this part and any applicable DOT agency regulations. Service agents are not employers for the purposes of this part.

Licensed medical practitioner means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

Negative return-to-duty test result means a return-to-duty test with a negative drug result and/or an alcohol test with an alcohol concentration of less than 0.02, as described in §40.305 of this title.

Performing (a safety-sensitive function) means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

Positive rate for random drug testing means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (*i.e.*, positives, negatives, and refusals) under this part.

Refuse to submit (to an alcohol or controlled substances test) means that a driver:

(1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see §40.61(a) of this title).

- (2) Fail to remain at the testing site until the testing process is complete. Provided, that an employee who leaves the testing site before the testing process commences (see §40.63(c) of this title) a pre-employment test is not deemed to have refused to test.
- (3) Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations. Provided, that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see §40.63(c) of this title) for a pre-employment test is not deemed to have refused to test.
- (4) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the driver's provision of a specimen (see §§40.67(l) and 40.69(g) of this title);
- (5) Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see §40.193(d)(2) of this title);
- (6) Fail or declines to take a second test the employer or collector has directed the driver to take.
- (7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under §40.193(d) of this title. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment.
- (8) Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process); or
- (9) Is reported by the MRO as having a verified adulterated or substituted test result.

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 he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

- (1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer.
- (2) All time inspecting equipment as required by §§392.7 and 392.8 of this subchapter or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.
- (3) All time spent at the driving controls of a commercial motor vehicle in operation.
- (4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of §393.76 of this subchapter).
- (5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Screening test (or initial test) means:

(1) In drug testing, a test to eliminate “negative” urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs.

(2) In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

Stand-down means the practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test results.

Violation rate for random alcohol testing means the number of 0.04 and above random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of random alcohol screening tests (including refusals) conducted under this part.

[66 FR 43103, Aug. 17, 2001, as amended at 68 FR 75458, Dec. 31, 2003; 77 FR 59825, Oct. 1, 2012; 81 FR 87724, Dec. 5, 2016; 83 FR 48726, Sept. 27, 2018; 84 FR 51432, Sept. 30, 2019]

Commercial Driver's License Drug and Alcohol Clearinghouse

Overview - The Clearinghouse will provide FMCSA and employers the necessary tools to identify drivers who are prohibited from operating a CMV based on DOT drug and alcohol program violations and ensure that such drivers receive the required evaluation and treatment before operating a CMV on public roads. Specifically, information maintained in the Clearinghouse will enable employers to identify drivers who commit a drug or alcohol program violation while working for one employer, but who fail to subsequently inform another employer (as required by current regulations). Records of drug and alcohol program violations will remain in the Clearinghouse for five years, or until the driver has completed the return-to-duty process, whichever is later. Employers will be required to query the Clearinghouse for current and prospective employees' drug and alcohol violations before permitting those employees to operate a commercial motor vehicle (CMV) on public roads. Employers will also be required to annually query the Clearinghouse for each driver they currently employ.

Part 382.601 - The following personal information collected and maintained under this part shall be reported to the Clearinghouse:

- (i) A verified positive, adulterated, or substituted drug test result.
- (ii) An alcohol confirmation test with a concentration of 0.04 or higher.
- (iii) A refusal to submit to any test required by subpart C of this part.
- (iv) An employer's report of actual knowledge, as defined at §382.107:
 - (A) On duty alcohol use pursuant to §382.205.
 - (B) Pre-duty alcohol use pursuant to §382.207.
 - (C) Alcohol use following an accident pursuant to §382.209; and
 - (D) Controlled substance use pursuant to §382.213;
- (v) A substance abuse professional (SAP as defined in §40.3 of this title) report of the successful completion of the return-to-duty process.
- (vi) A negative return-to-duty test; and
- (vii) An employer's report of completion of follow-up testing.

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING
Subpart G—Requirements and Procedures for Implementation of the Commercial Driver's License Drug and Alcohol Clearinghouse

- §382.701 Drug and Alcohol Clearinghouse.
- §382.703 Driver consent to permit access to information in the Clearinghouse.
- §382.705 Reporting to the Clearinghouse.
- §382.707 Notice to drivers of entry, revision, removal, or release of information.
- §382.709 Drivers' access to information in the Clearinghouse.
- §382.711 Clearinghouse registration.
- §382.713 Duration, cancellation, and revocation of access.
- §382.715 Authorization to enter information into the Clearinghouse.
- §382.717 Procedures for correcting information in the database.
- §382.719 Availability and removal of information.
- §382.721 Fees.
- §382.723 Unauthorized access or use prohibited.
- §382.725 Access by State licensing authorities.
- §382.727 Penalties.

Part 382 Subpart G - Requirements and Procedures for Implementation of the Commercial Driver's License Drug and Alcohol Clearinghouse
§ 382.701 - Drug and Alcohol Clearinghouse.

(a) *Pre-employment query required.* (1) Employers must not employ a driver subject to controlled substances and alcohol testing under this part to perform a safety-sensitive function without first conducting a pre-employment query of the Clearinghouse to obtain information about whether the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of § 382.211; or that an employer has reported actual knowledge, as defined at § 382.107, that the driver used alcohol on duty in violation of § 382.205, used alcohol before duty in violation of § 382.207, used alcohol following an accident in violation of § 382.209, or used a controlled substance, in violation of § 382.213.

(2) The employer must conduct a full query under this section, which releases information in the Clearinghouse to an employer and requires that the individual driver give specific consent.

(b) *Annual query required.* (1) Employers must conduct a query of the Clearinghouse at least once per year for information for all employees subject to controlled substance and alcohol testing under this part to determine whether information exists in the Clearinghouse about those employees.

(2) In lieu of a full query, as described in paragraph (a)(2) of this section, an employer may obtain the individual driver's consent to conduct a limited query to satisfy the annual query requirement in paragraph (b)(1) of this section. The limited query will tell the employer whether there is information about the individual driver in the Clearinghouse but will not release that information to the employer. The individual driver may give consent to conduct limited queries that is effective for more than one year.

(3) If the limited query shows that information exists in the Clearinghouse about the individual driver, the employer must conduct a full query, in accordance with paragraph (a)(2) of this section, within 24 hours of conducting the limited query. If the employer fails to conduct a full query within 24 hours, the employer must not allow the driver to continue to perform any safety-sensitive function until the employer conducts the full query and the results confirm that the driver's Clearinghouse record contains no prohibitions as defined in paragraph (d) of this section.

(c) *Employer notification.* If any information described in paragraph (a) of this section is entered into the Clearinghouse about a driver during the 30-day period immediately following an employer conducting a query of that driver's records, FMCSA will notify the employer.

(d) *Prohibition.* No employer may allow a driver to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of § 382.211; or that an employer has reported actual knowledge, as defined at § 382.107, that the driver used alcohol on duty in violation of § 382.205, used alcohol before duty in violation of § 382.207, used alcohol following an accident in violation of § 382.209, or used a controlled substance in violation of § 382.213, except where a query of the Clearinghouse demonstrates:

(1) That the driver has successfully completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, of this title; achieves a negative return-to-duty test result; and completes the follow-up testing plan prescribed by the SAP.

(2) That, if the driver has not completed all follow-up tests as prescribed by the SAP in accordance with § 40.307 of this title and specified in the SAP report required by § 40.311 of this title, the driver has completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, of this title and achieves a negative return-to-duty test result, and the employer assumes the responsibility for managing the follow-up testing process associated with the testing violation.

(e) *Recordkeeping required.* Employers must retain for 3 years a record of each query and all information received in response to each query made under this section. As of January 6, 2023, an employer who maintains a valid registration fulfills this requirement.

§382.703 Driver consent to permit access to information in the Clearinghouse.

(a) No employer may query the Clearinghouse to determine whether a record exists for any particular driver without first obtaining that driver's written or electronic consent. The employer conducting the search must retain the consent for 3 years from the date of the last query.

(b) Before the employer may access information contained in the driver's Clearinghouse record, the driver must submit electronic consent through the Clearinghouse granting the employer access to the following specific records:

(1) A verified positive, adulterated, or substituted controlled substances test result.

(2) An alcohol confirmation test with a concentration of 0.04 or higher.

(3) A refusal to submit to a test in violation of §382.211.

(4) An employer's report of actual knowledge, as defined at §382.107, of:

(i) On duty alcohol use pursuant to §382.205.

- (ii) Pre-duty alcohol use pursuant to §382.207.
- (iii) Alcohol use following an accident pursuant to §382.209; and
- (iv) Controlled substance use pursuant to §382.213;
- (5) A SAP report of the successful completion of the return-to-duty process;
- (6) A negative return-to-duty test; and
- (7) An employer's report of completion of follow-up testing.
- (c) No employer may permit a driver to perform a safety-sensitive function if the driver refuses to grant the consent required by paragraphs (a) and (b) of this section.
- (d) A driver granting consent under this section must provide consent electronically to the Agency through the Clearinghouse prior to release of information to an employer in accordance with §382.701(a)(2) or (b)(3).
- (e) A driver granting consent under this section grants consent for the Agency to release information to an employer in accordance with §382.701(c).

§382.705 Reporting to the Clearinghouse.

(a) *MROs.* (1) Within 2 business days of making a determination or verification, MROs must report the following information about a driver to the Clearinghouse:

- (i) Verified positive, adulterated, or substituted controlled substances test results.
- (ii) Refusal-to-test determination by the MRO in accordance with 49 CFR 40.191(a)(5), (7), and (11), (b), and (d)(2).

(2) MROs must provide the following information for each controlled substance test result specified in paragraph (a)(1) of this section:

- (i) Reason for the test.
- (ii) Federal Drug Testing Custody and Control Form specimen ID number.
- (iii) Driver's name, date of birth, and CDL number and State of issuance.
- (iv) Employer's name, address, and USDOT number, if applicable.
- (v) Date of the test.
- (vi) Date of the verified result; and
- (vii) Test result. The test result must be one of the following:
 - (A) Positive (including the controlled substance(s) identified);
 - (B) Refusal to test: Adulterated.
 - (C) Refusal to test: Substituted; or

(D) Refusal to provide a sufficient specimen after the MRO makes a determination, in accordance with §40.193 of this title, that the employee does not have a medical condition that

has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. Under this subpart a refusal would also include a refusal to undergo a medical examination or evaluation to substantiate a qualifying medical condition.

(3) Within 1 business day of making any change to the results report in accordance with paragraph (a)(1) of this section, a MRO must report that changed result to the Clearinghouse.

(b) *Employers.* (1) Employers must report the following information about a driver to the Clearinghouse by the close of the third business day following the date on which they obtained that information:

(i) An alcohol confirmation test result with an alcohol concentration of 0.04 or greater.

(ii) A negative return-to-duty test result.

(iii) A refusal to take an alcohol test pursuant to 49 CFR 40.261.

(iv) A refusal to test determination made in accordance with 49 CFR 40.191(a)(1) through (4), (a)(6), (a)(8) through (11), or (d)(1), but in the case of a refusal to test under (a)(11), the employer may report only those admissions made to the specimen collector; and

(v) A report that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§40.307, 40.309, and 40.311 of this title.

(2) The information required to be reported under paragraph (b)(1) of this section must include, as applicable:

(i) Reason for the test.

(ii) Driver's name, date of birth, and CDL number and State of issuance.

(iii) Employer name, address, and USDOT number.

(iv) Date of the test.

(v) Date the result was reported; and

(vi) Test result. The test result must be one of the following:

(A) Negative (only required for return-to-duty tests administered in accordance with §382.309);

(B) Positive; or

(C) Refusal to take a test.

(3) For each report of a violation of 49 CFR 40.261(a)(1) or 40.191(a)(1), the employer must report the following information:

(i) Documentation, including, but not limited to, electronic mail or other contemporaneous record of the time and date the driver was notified to appear at a testing site; and the time, date and testing site location at which the employee was directed to appear, or an affidavit providing evidence of such notification.

(ii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, indicating the date the employee was terminated or resigned (if applicable);

(iii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, showing that the C/TPA reporting the violation was designated as a service agent for an employer who employs himself/herself as a driver pursuant to paragraph (b)(6) of this section when the reported refusal occurred (if applicable); and

(iv) Documentation, including a certificate of service or other evidence, showing that the employer provided the employee with all documentation reported under paragraph (b)(3) of this section.

(4) Employers must report the following violations by the close of the third business day following the date on which the employer obtains actual knowledge, as defined at §382.107, of:

(i) On-duty alcohol use pursuant to §382.205.

(ii) Pre-duty alcohol use pursuant to §382.207.

(iii) Alcohol use following an accident pursuant to §382.209; and

(iv) Controlled substance use pursuant to §382.213.

(5) For each violation in paragraph (b)(4) of this section, the employer must report the following information:

(i) Driver's name, date of birth, CDL number and State of issuance.

(ii) Employer name, address, and USDOT number, if applicable.

(iii) Date the employer obtained actual knowledge of the violation.

(iv) Witnesses to the violation, if any, including contact information.

(v) Description of the violation.

(vi) Evidence supporting each fact alleged in the description of the violation required under paragraph (b)(4) of this section, which may include, but is not limited to, affidavits, photographs, video or audio recordings, employee statements (other than admissions pursuant to §382.121), correspondence, or other documentation; and

(vii) A certificate of service or other evidence showing that the employer provided the employee with all information reported under paragraph (b)(4) of this section.

(6) An employer who employs himself/herself as a driver must designate a C/TPA to comply with the employer requirements in paragraph (b) of this section related to his or her own alcohol and controlled substances use.

(c) *C/TPAs*. Any employer may designate a C/TPA to perform the employer requirements in paragraph (b) of this section. Regardless of whether it uses a C/TPA to perform its requirements, the employer retains ultimate responsibility for compliance with this section. Exception: An employer does not retain responsibility where the C/TPA is designated to comply with employer requirements as described in paragraph (b)(6) of this section.

(d) *SAPs*. (1) SAPs must report to the Clearinghouse for each driver who has completed the return-to-duty process in accordance with 49 CFR part 40, subpart O, the following information:

(i) SAPs name, address, and telephone number.

(ii) Driver's name, date of birth, and CDL number and State of issuance.

(iii) Date of the initial substance-abuse-professional assessment; and

(iv) Date the SAP determined that the driver demonstrated successful compliance as defined in 49 CFR part 40, subpart O, and was eligible for return-to-duty testing under this part.

(2) SAP must report the information required by paragraphs (d)(1)(i) through (iii) of this section by the close of the business day following the date of the initial substance abuse assessment and must report the information required by paragraph (d)(1)(iv) of this section by the close of the business day following the determination that the driver has completed the return-to-duty process.

(e) *Reporting truthfully and accurately.* Every person or entity with access must report truthfully and accurately to the Clearinghouse and is expressly prohibited from reporting information he or she knows or should know is false or inaccurate.

Reporting Entities and Circumstances

Reporting entity	When information will be reported to clearinghouse
Prospective/Current Employer of CDL Driver	—An alcohol confirmation test with a concentration of 0.04 or higher. —Refusal to test (alcohol) as specified in 49 CFR 40.261.
	—Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191.
	—Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance.
	—Negative return-to-duty test results (drug and alcohol testing, as applicable)
	—Completion of follow-up testing.
Service Agent acting on behalf of Current Employer of CDL Driver	—An alcohol confirmation test with a concentration of 0.04 or higher. —Refusal to test (alcohol) as specified in 49 CFR 40.261.
	—Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191.
	—Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance.
	—Negative return-to-duty test results (drug and alcohol testing, as applicable)
	—Completion of follow-up testing.
MRO	—Verified positive, adulterated, or substituted drug test result.
	—Refusal to test (drug) requiring a determination by the MRO as specified in 49 CFR 40.191.
SAP	—Identification of driver and date the initial assessment was

	initiated.
	—Successful completion of treatment and/or education and the determination of eligibility for return-to-duty testing.

§382.707 Notice to drivers of entry, revision, removal, or release of information.

- (a) FMCSA must notify a driver when information concerning that driver has been added to, revised, or removed from the Clearinghouse.
- (b) FMCSA must notify a driver when information concerning that driver has been released from the Clearinghouse to an employer and specify the reason for the release.
- (c) Drivers will be notified by letter sent by U.S. Mail to the address on record with the State Driver Licensing Agency that issued the driver's commercial driver's license. Exception: A driver may provide the Clearinghouse with an alternative means or address for notification, including electronic mail.

§382.709 Drivers' access to information in the Clearinghouse

A driver may review information in the Clearinghouse about himself or herself, except as otherwise restricted by law or regulation. A driver must register with the Clearinghouse before accessing his or her information.

§382.711 Clearinghouse registration

- (a) *Clearinghouse registration required.* Each employer and service agent must register with the Clearinghouse before accessing or reporting information in the Clearinghouse.
- (b) *Employers.* (1) Employer Clearinghouse registration must include:
 - (i) Name, address, and telephone number.
 - (ii) USDOT number, except if the registrant does not have a USDOT Number, it may be requested to provide other information to verify identity; and
 - (iii) Name of the person(s) the employer authorizes to report information to or obtain information from the Clearinghouse and any additional information FMCSA needs to validate his or her identity.
- (2) Employers must verify the names of the person(s) authorized under paragraph (b)(1)(iii) of this section annually.
- (3) Identification of the C/TPA or other service agent used to comply with the requirements of this part, if applicable, and authorization for the C/TPA to query or report information to the Clearinghouse. Employers must update any changes to this information within 10 days.
- (c) *MROs and SAPs.* Each MRO or SAP must provide the following to apply for Clearinghouse registration:
 - (1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity.

- (2) A certification that the applicant's access to the Clearinghouse is conditioned on his or her compliance with the applicable qualification and/or training requirements in 49 CFR part 40; and
- (3) Evidence of required professional credentials to verify that the applicant currently meets the applicable qualification and/or training requirements in 49 CFR part 40.

(d) *C/TPAs and other service agents.* Each consortium/third party administrator or other service agent must provide the following to apply for Clearinghouse registration:

- (1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity; and
- (2) Name, title, and telephone number of the person(s) authorized to report information to and obtain information from the Clearinghouse.
- (3) Each C/TPA or other service agent must verify the names of the person(s) authorized under paragraph (d)(2) of this section annually.

§382.713 Duration, cancellation, and revocation of access.

- (a) *Term.* Clearinghouse registration is valid for 5 years, unless cancelled or revoked.
- (b) *Cancellation.* FMCSA will cancel Clearinghouse registrations for anyone who has not queried or reported to the Clearinghouse for 2 years.
- (c) *Revocation.* FMCSA has the right to revoke the Clearinghouse registration of anyone who fails to comply with any of the prescribed rights and restrictions on access to the Clearinghouse, including but not limited to, submission of inaccurate or false information and misuse or misappropriation of access rights or protected information from the Clearinghouse and failure to maintain the requisite qualifications, certifications and/or training requirements as set forth in part 40 of this title.

§382.715 Authorization to enter information into the Clearinghouse.

- (a) *C/TPAs.* No C/TPA or other service agent may enter information into the Clearinghouse on an employer's behalf unless the employer designates the C/TPA or other service agent.
- (b) *SAPs.* A driver must designate a SAP before that SAP can enter any information about the driver's return-to-duty process into the Clearinghouse.

§382.717 Procedures for correcting information in the database.

- (a) *Petitions limited to inaccurately reported information.* (1) Under this section, petitioners may challenge only the accuracy of information reporting, not the accuracy of test results or refusals.
- (2) *Exceptions.* (i) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge that the driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances if the citation did not result in a conviction. For the purposes of this section, conviction has the same meaning as used in 49 CFR part 383.

(ii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge (other than as provided for in paragraph (a)(2)(i) of this section) if that report does not comply with the reporting requirements in §382.705(b)(5).

(iii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of a violation under 49 CFR 40.261(a)(1) or 40.191(a)(1) if that report does not comply with the reporting requirements in §382.705(b)(3).

(b) *Petition.* Any driver or authorized representative of the driver may submit a petition to the FMCSA contesting the accuracy of information in the Clearinghouse. The petition must include:

- (1) The petitioner's name, address, telephone number, and CDL number and State of issuance.
- (2) Detailed description of the basis for the allegation that the information is not accurate; and
- (3) Evidence supporting the allegation that the information is not accurate. Failure to submit evidence is cause for dismissing the petition.

(c) *Submission of petition.* The petitioner may submit his/her petition electronically through the Clearinghouse or in writing to: Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, Attention: Drug and Alcohol Program Manager, 1200 New Jersey Avenue SE., Washington, DC 20590.

(d) *Notice of decision.* Within 45 days of receiving a complete petition, FMCSA will inform the driver in writing of its decision to remove, retain, or correct the information in the database and provide the basis for the decision.

(e) *Request for expedited treatment.* (1) A driver may request expedited treatment to correct inaccurate information in his or her Clearinghouse record under paragraph (a)(1) of this section if the inaccuracy is currently preventing him or her from performing safety-sensitive functions, or to remove employer reports under paragraph (a)(2) of this section if such reports are currently preventing him or her from performing safety-sensitive functions. This request may be included in the original petition or as a separate document.

(2) If FMCSA grants expedited treatment, it will subsequently inform the driver of its decision in writing within 14 days of receipt of a complete petition.

(f) *Administrative review.* (1) A driver may request FMCSA to conduct an administrative review if he or she believes that a decision made in accordance with paragraph (d) or (e) of this section was in error.

(2) The request must prominently state at the top of the document: "Administrative Review of Drug and Alcohol Clearinghouse Decision" and the driver may submit his/her request electronically through the Clearinghouse or in writing to the Associate Administrator for Enforcement (MC-E), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590.

(3) The driver's request must explain the error he or she believes FMCSA committed and provide information and/or documents to support his or her argument.

(4) FMCSA will complete its administrative review no later than 30 days after receiving the driver's request for review. The Associate Administrator's decision will constitute the final Agency action.

(g) *Subsequent notification to employers.* When information is corrected or removed in accordance with this section, or in accordance with 49 CFR part 10, FMCSA will notify any employer that accessed the incorrect information that a correction or removal was made.

§382.719 Availability and removal of information.

(a) *Driver information not available.* Information about a driver's drug or alcohol violation will not be available to an employer conducting a query of the Clearinghouse after all the following conditions relating to the violation are satisfied:

- (1) The SAP reports to the Clearinghouse the information required in §382.705(d).
- (2) The employer reports to the Clearinghouse that the driver's return-to-duty test results are negative.
- (3) The driver's current employer reports that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§40.307, 40.309, and 40.311 of this title; and
- (4) Five years have passed since the date of the violation determination.

(b) *Driver information remains available.* Information about a particular driver's drug or alcohol violation will remain available to employers conducting a query until all requirements in paragraph (a) of this section have been met.

(c) *Exceptions.* (1) Within 2 business days of granting a request for removal pursuant to §382.717(a)(2)(i), FMCSA will remove information from the Clearinghouse.

(2) Information about a particular driver's drug or alcohol violation may be removed in accordance with §382.717(a)(2)(ii) and (iii) or in accordance with 49 CFR part 10.

(d) *Driver information remains available.* Nothing in this part shall prevent FMCSA from using information removed under this section for research, auditing, or enforcement purposes.

§382.721 Fees.

FMCSA may collect a reasonable fee from entities required to query the Clearinghouse. Exception: No driver may be required to pay a fee to access his or her own information in the Clearinghouse.

§382.723 Unauthorized access or use prohibited.

(a) Except as expressly authorized in this subpart, no person or entity may access the Clearinghouse. No person or entity may share, distribute, publish, or otherwise release any information in the Clearinghouse except as specifically authorized by law. No person may report inaccurate or misleading information to the Clearinghouse.

(b) An employer's use of information received from the Clearinghouse is limited to determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle. No employer may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle.

(c) Violations of this section are subject to civil and criminal penalties in accordance with applicable law, including those set forth at §382.507.

(d) Nothing in this part shall prohibit FMCSA from accessing information about individual drivers in the Clearinghouse for research, auditing, or enforcement purposes.

§382.725 Access by State licensing authorities.

(a)(1) Beginning January 6, 2020, and before January 6, 2023, in order to determine whether a driver is qualified to operate a commercial motor vehicle, the chief commercial driver's licensing official of a State may obtain the driver's record from the Clearinghouse if the driver has applied for a commercial driver's license from that State.

(2) On or after January 6, 2023, in order to determine whether a driver is qualified to operate a commercial motor vehicle, the chief commercial driver's licensing official of a State must obtain the driver's record from the Clearinghouse if the driver has applied for a commercial driver's license from that State.

(b) By applying for a commercial driver's license, a driver is deemed to have consented to the release of information from the Clearinghouse in accordance with this section.

(c) The chief commercial driver's licensing official's use of information received from the Clearinghouse is limited to determining an individual's qualifications to operate a commercial motor vehicle. No chief driver's licensing official may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining an individual's qualifications to operate a commercial motor vehicle.

(d) A chief commercial driver's licensing official who does not take appropriate safeguards to protect the privacy and confidentiality of information obtained under this section is subject to revocation of his or her right of access under this section.

§382.727 Penalties.

An employer, employee, MRO, or service agent who violates any provision of this subpart shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. 521(b)(2)(C).

Civil penalties for an employer, employee, medical review officer, or service agent who violates the regulations implementing the Drug and Alcohol Clearinghouse will cost \$5,833 for a single DOT violation.

[81 FR 87725, Dec. 5, 2016, as amended at 84 FR 68057, Dec. 13, 2019]

For more information on the Clearinghouse, please visit:

<https://clearinghouse.fmcsa.dot.gov>

APPENDIX A

§ 40.87 What are the cutoff concentrations for drug tests?

(a) As a laboratory, you must use the cutoff concentrations displayed in the following table for initial and confirmatory drug tests. All cutoff concentrations are expressed in nanograms per milliliter (ng/mL). The table follows:

Cutoff Concentrations for Drug Tests			
Initial test analyte	Initial test cutoff ¹	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana metabolites (THCA) ²	50 ng/mL ³	THCA	15 ng/mL.
Cocaine metabolite (Benzoylecgonine)	150 ng/mL ³	Benzoylecgonine	100 ng/mL.
Codeine/ Morphine	2000 ng/mL	Codeine Morphine	2000 ng/mL. 2000 ng/mL.
Hydrocodone/ Hydromorphone	300 ng/mL	Hydrocodone Hydromorphone	100 ng/mL. 100 ng/mL.
Oxycodone/ Oxymorphone	100 ng/mL	Oxycodone Oxymorphone	100 ng/mL. 100 ng/mL.
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL.
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL.
Amphetamine/ Methamphetamine	500 ng/mL	Amphetamine Methamphetamine	250 ng/mL. 250 ng/mL.
MDMA ⁴ /MDA ⁵	500 ng/mL	MDMA MDA	250 ng/mL. 250 ng/mL.

¹For grouped analytes (i.e., two or more analytes that are in the same drug class and have the same initial test cutoff):

Immunoassay: The test must be calibrated with one analyte from the group identified as the target analyte. The cross-reactivity of the immunoassay to the other analyte(s) within the group must be 80 percent or greater; if not, separate immunoassays must be used for the analytes within the group.

Alternate technology: Either one analyte or all analytes from the group must be used for calibration, depending on the technology. At least one analyte within the group must have a concentration equal to or greater than the initial test cutoff or, alternatively, the sum of the analytes present (i.e., equal to or greater than the laboratory's validated limit of quantification) must be equal to or greater than the initial test cutoff.

²An immunoassay must be calibrated with the target analyte, Δ-9-tetrahydrocannabinol-9-carboxylic acid (THCA).

³Alternate technology (THCA and Benzoylcegonine): When using an alternate technology initial test for the specific target analytes of THCA and Benzoylcegonine, the laboratory must use the same cutoff for the initial and confirmatory tests (i.e., 15 ng/mL for THCA and 100ng/mL for Benzoylcegonine).

⁴Methylenedioxymethamphetamine (MDMA).

⁵Methylenedioxyamphetamine (MDA).

(b) On an initial drug test, you must report a result below the cutoff concentration as negative. If the result is at or above the cutoff concentration, you must conduct a confirmation test.

(c) On a confirmation drug test, you must report a result below the cutoff concentration as negative and a result at or above the cutoff concentration as confirmed positive.

(d) You must report quantitative values for morphine or codeine at 15,000 ng/mL or above.

[65 FR 79526, Dec. 19, 2000, as amended at 75 FR 49862, August 16, 2010; 77 FR 26473, May 4, 2012; 82 FR 52244, November 13, 2017]

Updated: Monday, January 1, 2018

Subpart R - Public Interest Exclusions

§ 40.361 What is the purpose of a public interest exclusion (PIE)?

(a) To protect the public interest, including protecting transportation employers and employees from serious noncompliance with DOT drug and alcohol testing rules, the Department's policy is to ensure that employers conduct business only with responsible service agents.

(b) The Department therefore uses PIEs to exclude from participation in DOT's drug and alcohol testing program any service agent who, by serious noncompliance with this part or other DOT agency drug and alcohol testing regulations, has shown that it is not currently acting in a responsible manner.

(c) A PIE is a serious action that the Department takes only to protect the public interest. We intend to use PIEs only to remedy situations of serious noncompliance. PIEs are not used for the purpose of punishment.

(d) Nothing in this subpart precludes a DOT agency or the Inspector General from taking other action authorized by its regulations with respect to service agents or employers that violate its regulations.

The Employer will not use the services of any service agent on the Federal Register listed under the Public Interest Exclusions and will stop using any services no later than 90 days after the Department has published the decision in the Federal Register.

APPENDIX B

Administrative Services Director, Stephanie Lucas or Personnel Generalist, Karen Locklear are designated by the company to be available to all drivers for the purpose of answering any questions about company's Substance Abuse and Alcohol Misuse Policy, including information about the availability of materials on substance abuse and alcohol misuse.

APPENDIX C

Educational materials about the effects of substance abuse, including alcohol, are available to all company drivers at the following locations:

1. Gulf Breeze City Hall, 1070 Shoreline Dr, Gulf Breeze, FL 32561

NOTE: A copy of the company Substance Abuse and Alcohol Misuse Policy is available to representatives of employee organizations. Specifically, this Appendix will serve as written notification to such representatives regarding the availability of educational materials for drivers.

APPENDIX D

HELP FOR SUBSTANCE ABUSE PROBLEMS:

Employees who want help with a substance abuse problem (self or other) can begin the helping process by calling the following telephone numbers:

- * EAP Lifestyle Management Services: 800-788-2077 or 251-621-5360 24 hours a day (Confidential) Website: EAPLifestyle.com
- * Public Risk Management of Florida: 800-272-3626 www.mylifevalues.com
Username: PRM/ Password:8002723626 24 hour Confidential Access