

§ 382.101

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- 382.701 Drug and Alcohol Clearinghouse.
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- 382.723 Unauthorized access or use prohibited.

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382.725 Access by State licensing authorities.

382.727 Penalties.

AUTHORITY: 49 U.S.C. 31133, 31136, 31301 *et seq.*, 31502; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

SOURCE: 66 FR 43103, Aug. 17, 2001, unless otherwise noted.

Subpart A—General

§ 382.101 Purpose.

The purpose of this part is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

§ 382.103 Applicability.

(a) This part applies to service agents and to every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any State and are subject to:

(1) The commercial driver's license requirements of part 383 of this subchapter;

(2) The Licencia Federal de Conductor (Mexico) requirements; or

(3) The commercial drivers license requirements of the Canadian National Safety Code.

(b) An employer who employs himself/herself as a driver must comply with both the requirements in this part that apply to employers and the requirements in this part that apply to drivers. An employer who employs only himself/herself as a driver shall implement a random alcohol and controlled substances testing program of two or more covered employees in the random testing selection pool.

(c) The exceptions contained in § 390.3(f) of this subchapter do not apply to this part. The employers and drivers identified in § 390.3(f) of this subchapter must comply with the requirements of this part, unless otherwise specifically provided in paragraph (d) of this section.

(d) *Exceptions.* This part shall not apply to employers and their drivers:

(1) Required to comply only with the alcohol and/or controlled substances testing requirements of part 655 of this title (Federal Transit Administration

alcohol and controlled substances testing regulations); or

(2) Who a State must waive from the requirements of part 383 of this subchapter. These individuals include active duty military personnel; members of the reserves; and members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training and national guard military technicians (civilians who are required to wear military uniforms), and active duty U.S. Coast Guard personnel; or

(3) Who a State has, at its discretion, exempted from the requirements of part 383 of this subchapter. These individuals may be:

(i) Operators of a farm vehicle which is:

(A) Controlled and operated by a farmer;

(B) Used to transport either agricultural products, farm machinery, farm supplies, or both to or from a farm;

(C) Not used in the operations of a for-hire motor carrier, except for an exempt motor carrier as defined in § 390.5 of this subchapter; and

(D) Used within 241 kilometers (150 miles) of the farmer's farm.

(ii) Firefighters or other persons who operate commercial motor vehicles which are necessary for the preservation of life or property or the execution of emergency governmental functions, are equipped with audible and visual signals, and are not subject to normal traffic regulation.

(4) Who operate "covered farm vehicles," as defined in 49 CFR 390.5.

[66 FR 43103, Aug. 17, 2001, as amended at 78 FR 16194, Mar. 14, 2013; 81 FR 68346, Oct. 4, 2016; 81 FR 71016, Oct. 14, 2016; 81 FR 87724, Dec. 5, 2016; 86 FR 35639, July 7, 2021]

§ 382.105 Testing procedures.

Each employer shall ensure that all alcohol or controlled substances testing conducted under this part complies with the procedures set forth in part 40 of this title. The provisions of part 40 of this title that address alcohol or controlled substances testing are made applicable to employers by this part.

§ 382.107 Definitions.

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—

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)