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§ 382.111 Other requirements imposed by employers.

Except as expressly provided in this part, nothing in this part shall be construed to affect the authority of employers, or the rights of drivers, with respect to the use of alcohol, or the use of controlled substances, including authority and rights with respect to testing and rehabilitation.

§ 382.113 Requirement for notice.

Before performing each alcohol or controlled substances test under this part, each employer shall notify a driver that the alcohol or controlled substances test is required by this part. No employer shall falsely represent that a test is administered under this part.

§ 382.115 Starting date for testing programs.

(a) All domestic-domiciled employers must implement the requirements of this part on the date the employer begins commercial motor vehicle operations.

(b) All foreign-domiciled employers must implement the requirements of this part on the date the employer begins commercial motor vehicle operations in the United States.

§ 382.117 Public interest exclusion.

No employer shall use the services of a service agent who is subject to public interest exclusion in accordance with 49 CFR part 40, Subpart R.

§ 382.119 Stand-down waiver provision.

(a) Employers are prohibited from standing employees down, except consistent with a waiver from the Federal Motor Carrier Safety Administration as required under this section.

(b) An employer subject to this part who seeks a waiver from the prohibition against standing down an employee before the MRO has completed the verification process shall follow the procedures in 49 CFR 40.21. The employer must send a written request, which includes all of the information required by that section to the Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590–0001.

(c) The final decision whether to grant or deny the application for a waiver will be made by the Administrator or the Administrator's designee.

(d) After a decision is signed by the Administrator or the Administrator's designee, the employer will be sent a copy of the decision, which will include the terms and conditions for the waiver or the reason for denying the application for a waiver.

(e) Questions regarding waiver applications should be directed to the Federal Motor Carrier Safety Administration, Office of Safety Programs (MC–SS), 1200 New Jersey Ave., SE., Washington, DC 20590–0001.

[66 FR 43103, Aug. 17, 2001, as amended at 72 FR 55700, Oct. 1, 2007; 87 FR 59035, Sept. 29, 2022]

§ 382.121 Employee admission of alcohol and controlled substances use.

(a) Employees who admit to alcohol misuse or controlled substances use are not subject to the referral, evaluation and treatment requirements of this part and part 40 of this title, provided that:

(1) The admission is in accordance with a written employer-established voluntary self-identification program or policy that meets the requirements of paragraph (b) of this section;

(2) The driver does not self-identify in order to avoid testing under the requirements of this part;

(3) The driver makes the admission of alcohol misuse or controlled substances use prior to performing a safety sensitive function (i.e., prior to reporting for duty); and

(4) The driver does not perform a safety sensitive function until the employer is satisfied that the employee has been evaluated and has successfully completed education or treatment requirements in accordance with the self-identification program guidelines.

(b) A qualified voluntary self-identification program or policy must contain the following elements:

(1) It must prohibit the employer from taking adverse action against an employee making a voluntary admission of alcohol misuse or controlled substances use within the parameters

of the program or policy and paragraph (a) of this section;

(2) It must allow the employee sufficient opportunity to seek evaluation, education or treatment to establish control over the employee's drug or alcohol problem;

(3) It must permit the employee to return to safety sensitive duties only upon successful completion of an educational or treatment program, as determined by a drug and alcohol abuse evaluation expert, i.e., employee assistance professional, substance abuse professional, or qualified drug and alcohol counselor;

(4) It must ensure that:

(i) Prior to the employee participating in a safety sensitive function, the employee shall undergo a non-DOT return to duty test with a result indicating an alcohol concentration of less than 0.02; and/or

(ii) Prior to the employee participating in a safety sensitive function, the employee shall undergo a non-DOT return to duty controlled substance test with a verified negative test result for controlled substances use; and

(5) It may incorporate employee monitoring and include non-DOT follow-up testing.

[66 FR 43103, Aug. 17, 2001, as amended at 86 FR 35639, July 7, 2021]

§ 382.123 Driver identification.

(a) *Identification information on the Alcohol Testing Form (ATF).* For each alcohol test performed under this part, the employer shall provide the driver's commercial driver's license number and State of issuance in Step 1, Section B of the ATF.

(b) *Identification information on the Federal Drug Testing Custody and Control Form (CCF).* For each controlled substance test performed under this part, the employer shall provide the following information, which must be recorded as follows:

(1) The driver's commercial driver's license number and State of issuance in Step 1, section C of the CCF.

(2) The employer's name and other identifying information required in Step 1, section A of the CCF.

[81 FR 87724, Dec. 5, 2016, as amended at 86 FR 35639, July 7, 2021]

Subpart B—Prohibitions

§ 382.201 Alcohol concentration.

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having knowledge that a driver has an alcohol concentration of 0.04 or greater shall permit the driver to perform or continue to perform safety-sensitive functions.

[66 FR 43103, Aug. 17, 2001, as amended at 77 FR 4483, Jan. 30, 2012]

§ 382.205 On-duty use.

No driver shall use alcohol while performing safety-sensitive functions. No employer having actual knowledge that a driver is using alcohol while performing safety-sensitive functions shall permit the driver to perform or continue to perform safety-sensitive functions.

§ 382.207 Pre-duty use.

No driver shall perform safety-sensitive functions within four hours after using alcohol. No employer having actual knowledge that a driver has used alcohol within four hours shall permit a driver to perform or continue to perform safety-sensitive functions.

§ 382.209 Use following an accident.

No driver required to take a post-accident alcohol test under § 382.303 shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

§ 382.211 Refusal to submit to a required alcohol or controlled substances test.

No driver shall refuse to submit to a pre-employment controlled substance test required under § 382.301, a post-accident alcohol or controlled substance test required under § 382.303, a random alcohol or controlled substances test required under § 382.305, a reasonable suspicion alcohol or controlled substance test required under § 382.307, a return-to-duty alcohol or controlled substances test required under § 382.309, or a follow-up alcohol or controlled substance test required under § 382.311.