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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]

49 CFR Ch. III (10–1–25 Edition)

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.

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No employer shall permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

[77 FR 4483, Jan. 30, 2012]

§ 382.213 Controlled substance use.

(a) 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.

(b) 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 prescribed by 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.

(c) No employer having actual knowledge that a driver has used a controlled substance, as defined in § 382.107, shall permit the driver to perform or continue to perform a safety-sensitive function, except when the use is prescribed by 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.

(d) An employer may require a driver to inform the employer of any therapeutic drug use.

[77 FR 4483, Jan. 30, 2012, as amended at 88 FR 80180, Nov. 17, 2023]

§ 382.215 Controlled substances testing.

No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive or has adulterated or substituted a test specimen for controlled substances. No employer having knowledge that a driver has tested positive or has adulterated or substituted a test specimen for controlled substances 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]

§ 382.217 Employer responsibilities.

No employer may allow, require, permit or authorize a driver to operate a commercial motor vehicle during any period in which an employer determines that a driver is not in compliance with the return-to-duty requirements in 49 CFR part 40, subpart O, after the occurrence of any of the following events:

(a) The driver receives a positive, adulterated, or substituted drug test result conducted under part 40 of this title.

(b) The driver receives an alcohol confirmation test result of 0.04 or higher alcohol concentration conducted under part 40 of this title.

(c) The driver refused to submit to a test for drugs or alcohol required under this part.

(d) The driver used alcohol prior to a post-accident alcohol test in violation of § 382.209.

(e) An employer has actual knowledge, as defined at § 382.107, that a driver has:

(1) Used alcohol while performing safety-sensitive functions in violation of § 382.205;

(2) Used alcohol within four hours of performing safety-sensitive functions in violation of § 382.207; or

(3) Used a controlled substance, except when the use is prescribed by a licensed medical practitioner 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.

[81 FR 87724, Dec. 5, 2016, as amended at 88 FR 80180, Nov. 17, 2023]

Subpart C—Tests Required

§ 382.301 Pre-employment testing.

(a) Prior to the first time a driver performs safety-sensitive functions for an employer, the driver shall undergo testing for controlled substances as a condition prior to being used, unless the employer uses the exception in