

Fleet: Drug and Alcohol Testing

Drug and alcohol testing policy requirements:

Does your policy have these required components? The Federal Motor Carrier Safety Administration rule [49 CFR Part 382 Subpart F](#) requires employers establish a policy on the misuse of alcohol and the use of controlled substances. This document outlines the requirements under the FMCSA and provides some tips to consider while developing your policy.

§ 382.601 Employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances

(a) General requirements. Each employer shall provide educational materials that explain the requirements of this part and the employer's policies and procedures with respect to meeting these requirements.

- (1) The employer shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing under this part and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle.
- (2) Each employer shall provide written notice to representatives of employee organizations of the availability of this information.

(b) Required content. The materials to be made available to drivers shall include detailed discussion of at least the following:

- (1) The identity of the person designated by the employer to answer driver questions about the materials;
Nationwide Risk Management Tip: It may be preferred that a job title or position (such as human resource director) be listed rather than the name of a person, because if a named person was to leave employment, the policy would be outdated.
- (2) The categories of drivers who are subject to the provisions of this part;
- (3) Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance with this part;
Nationwide Risk Management Tip: List items such as driving, maintaining/repairing or loading CMV.
- (4) Specific information concerning driver conduct that is prohibited by this part;
- (5) The circumstances under which a driver will be tested for alcohol and/or controlled substances under this part, including post-accident testing under [§ 382.303\(d\)](#);

(6) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by [§ 382.303\(d\)](#);

(7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this part;

(8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;
Nationwide Risk Management Tip: Failure to show up at the testing site, failing to remain at the testing site, failure to comply with orders, etc. are all examples of refusing a test, including, being unable to provide an adequate sample. It would be important to list that a test refusal would result in disciplinary action, such as termination. You would not be able to have an operator drive your vehicle that refuses until they have completed a Substance Abuse Provider evaluation and treatment.

(9) The consequences for drivers found to have violated [subpart B of this part](#), including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under part 40, subpart O, of this title;

Nationwide Risk Management Tip: It is important that you advise what the consequences are for failing a drug and/or alcohol test. It could be termination of employment or a requirement to undergo a treatment program to return to work and be subject to return to work and follow-up testing.

(10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;
Nationwide Risk Management Tip: Drivers who test at this level are required to be removed for performing safety sensitive functions, including driving for 24 hours. The regulation 382.505 also prohibits the employer from any additional action.

(11) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management; and
Nationwide Risk Management Tip: This information can be provided by pamphlet, video or other means.

(12) The requirement that 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.

(c) Optional provision. The materials supplied to drivers may also include information on additional employer policies with respect to the use of alcohol or controlled substances, including any consequences for a driver found to have a specified alcohol or controlled substances level, that are based on the employer's authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

(d) Certificate of receipt. Each employer shall ensure that each driver is required to sign a statement certifying that he or she has received a copy of these materials described in this section. Each employer shall maintain the signed certificate and may provide a copy of the certificate to the driver.

What if an employee admits to alcohol misuse or controlled substances use?

[Section 382.121](#) of the Code of Federal Regulations addresses this question and should be included in your policy. Below are some of the key points:

Employees who self-identify alcohol misuse or controlled substance use are exempt from referral, evaluation, and treatment requirements under certain conditions:

- * Admission must align with written employer-established voluntary self-identification program.
- * Driver's self-identification should not be an attempt to avoid testing.
- * Admission must occur before performing safety-sensitive duties.
- * Employee must complete education or treatment as per program guidelines.

Additionally, the qualified self-identification program must:

- * Prohibit adverse action against employees who voluntarily admit to alcohol misuse or controlled substances use.
- * Allow sufficient time for evaluation, education, or treatment.
- * Permit return to safety-sensitive duties only after successful completion of an educational or treatment program.
- * Ensure a non-DOT return-to-duty test with an alcohol concentration below 0.02 and a verified negative test for controlled substances use before participating in safety-sensitive functions.

Refer to Federal Motor Carrier Safety Administration 49 CFR 382.121 Subpart B ([ecfr.gov/current/title-49/section-382.121](https://www.ecfr.gov/current/title-49/section-382.121)).

If you need further assistance in developing a Drug and Alcohol testing policy, visit:
<https://www.fmcsa.dot.gov/regulations/drug-alcohol-testing-program>.



For assistance with risk management services or safety resources, contact us at RMSolutions@nationwide.com or 1-800-260-1356.

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