

Federally-Mandated Probable Cause Training for CDL Supervisory Personnel

Presented by the
PSATS CDL Program



PSATS CDL Program

James Wheeler

Cheryl Simpson



PSATS CDL Program

We are here to help!

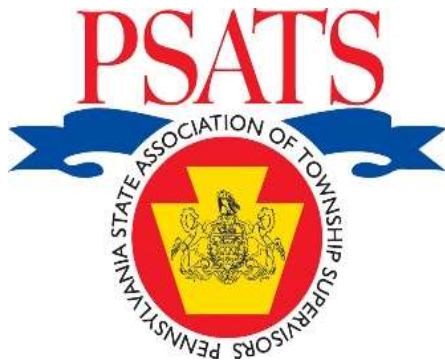


PSATS CDL Program

1-800-235-7579

CDL@PSATS.org

CDL.PSATS.org




CDL.PSATS.org

HOME CONTACT US



ABOUT ▾ LEGISLATIVE & POLICY ▾ PROGRAMS & SERVICES ▾ PARTNERS ▾



EDUCATION ▾ NEWSROOM ▾ PSATS STORE ▾ SIGN IN ▾ 

CDL Drug & Alcohol Testing Program

HOME / PROGRAMS & SERVICES

PROGRAMS & SERVICES

CDL Drug & Alcohol Testing Program

Legal Defense Partnership

PSATS Awards Programs

PSATS Trustees Insurance and Retirement Services

Power of One Program

Website Hosting Service

The PSATS CDL Drug & Alcohol Testing Program



Join CDL Program

Comply with state and federal CDL regulations while keeping your costs to a minimum.



CDL Documents

Click view for a listing of relevant documents and forms.



Education

Find our current classes, webinars, on-demand webinars and seminars.

Federally-Mandated Probable Cause Training for CDL Supervisory Personnel

For your planning purposes, we
will take a 10-minute coffee
break at 10:10 a.m.





This class is worth 2.5 PMGA Public Works points for those enrolled in PMGA, our special education and leadership development program.



**For more information about PMGA,
the PSATS Municipal Government
Academy, send an email to
PMGA@PSATS.org.**



**Additional information about the PSATS
Education Program can be found by clicking
on the “Education” tab at Learn.PSATS.org**

CDL Drug and Alcohol Testing Required

- CDL employee drug and alcohol testing requirements in Pa. are governed by the federal interstate CDL regulations at 49 CFR Part 382 because Pa.'s intrastate CDL regulations at 67 Pa. Code 231 specifically adopts the following federal requirements:

CDL Drug and Alcohol Testing Required

- 49 CFR regs adopted by PA:
 - 382 (Controlled Substances and Alcohol Use and Testing)
 - 385 (Safety Fitness Procedures)
 - 390 (Federal Motor Carrier Safety Regulations; General)
 - 391 (Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructions)
 - 392 (Driving of Commercial Motor Vehicles)
 - 393 (Parts and Accessories Necessary for Safe Operation)
 - 395 (Hours of Service of Drivers)
 - 396 (Inspection, Repair, and Maintenance)

Federal CDL Drug and Alcohol Testing Regulations

- Federal interstate CMV regulations can be found online at www.fmcsa.dot.gov.
- Then click on “Regulations”, then click on “Search FMCSA Regulations and Interpretations - 49 CFR Parts 300-399.”
- Then scroll down to Section 382.

FMCSA CDL Regulations

The screenshot shows the FMCSA website with a navigation menu on the left and a main content area. The navigation menu includes: Home / Regulations, Regulations, Search Regulations, Rulemaking Documents, Notices, Regulatory Enforcement (with a right-pointing arrow), and Disclaimer. The main content area features a large 'Regulations' heading, a paragraph explaining that regulations are published in the Federal Register and compiled in the U.S. Code of Federal Regulations (CFR), and a 'Search' section with three bullet points: 'Search FMCSA Regulations and Interpretations - 49 CFR Parts 300-399', 'Search HM Regulations - 49 CFR Parts 100-177', and 'Search HM Regulations - 49 CFR Parts 178-180'. A red arrow points to the third search option. The website header includes the FMCSA logo, a search bar, and social media icons for Facebook, Twitter, Google+, and Email. A green banner at the top provides information about COVID-19.

← → ↻ fmcsa.dot.gov/regulations

An official website of the United States government [Here's how you know](#) ▾

! The latest information on the Coronavirus Disease 2019 (COVID-19) is available on [coronavirus.gov](#).

United States Department of Transportation

FMCSA
Federal Motor Carrier Safety Administration

Search

f

Twitter

G

Envelope

+

Home / Regulations

Regulations

Search Regulations

Rulemaking Documents

Notices

Regulatory Enforcement >

Disclaimer

Regulations

Regulations issued by FMCSA are published in the Federal Register and compiled in the U.S. Code of Federal Regulations (CFR). Copies of appropriate volumes of the CFR in book format may be purchased from the Superintendent of Documents, U.S. Government Printing Office, or examined at many libraries. The CFR may also be viewed online.

Search

- [Search FMCSA Regulations and Interpretations - 49 CFR Parts 300-399](#)
- [Search HM Regulations - 49 CFR Parts 100-177](#)
- [Search HM Regulations - 49 CFR Parts 178-180](#)

FMCSA CDL Regulations

Electronic Code of Federal Regulations

We invite you to try out our new beta eCFR site at <https://ecfr.federalregister.gov>. We have made big changes to make the eCFR easier to use. Be sure to leave feedback using the Feedback button on the bottom right of each page!

e-CFR data is current as of February 9, 2021

 [Title 49](#) → [Subtitle B](#) → [Chapter III](#) → [Subchapter B](#) → [Part 382](#)

[Browse Previous](#) | [Browse Next](#)

Title 49: Transportation

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

Contents

Subpart A—General

- §382.101 Purpose.
- §382.103 Applicability.
- §382.105 Testing procedures.
- §382.107 Definitions.
- §382.109 Preemption of State and local laws.
- §382.111 Other requirements imposed by employers.
- §382.113 Requirement for notice.
- §382.115 Starting date for testing programs.
- §382.117 Public interest exclusion.
- §382.119 Stand-down waiver provision.
- §382.121 Employee admission of alcohol and controlled substances use.
- §382.123 Driver identification.

PA CDL Drug and Alcohol Testing Regulations

- Pa.'s intrastate CMV and CDL regulations can be found at www.pacodeandbulletin.gov
- Under “Browse Code”, select “67 Transportation” and then scroll down to “Chapter 231”.

PA CDL Regulations

The screenshot shows the website pacodeandbulletin.gov. The navigation bar includes links for HOME, SEARCH, ABOUT, CONTACT, FAQ, and ALERTS. On the left, there is a sidebar with the Pennsylvania Code & Bulletin logo, an image of the state capitol dome, and text about the Commonwealth of Pennsylvania and the website's content. The main content area is divided into two columns: SEARCH and BROWSE. The SEARCH section has two search boxes, one for CODE and one for BULLETIN. The BROWSE section has two lists: CODE and BULLETIN. The CODE list includes categories 61 REVENUE, 64 SECURITIES, 67 TRANSPORTATION, 70 WEIGHTS, MEASURES AND STANDARDS, and 101 GENERAL ASSEMBLY. A red arrow points to the '67 TRANSPORTATION' category. The BULLETIN list includes Volume 50, Volume 49, Volume 48, and Volume 47. Below the BROWSE section, there is a 'VIEW CURRENT ISSUE of the BULLETIN' section showing 'Volume 50 Number 27' dated 'Saturday, July 4, 2020'. There are also sections for 'Disclaimer and Terms of Use' and 'Questions regarding a regulation or notice should be directed to the promulgating agency.'

← → ↻ pacodeandbulletin.gov ☆ ⓘ

HOME SEARCH ▾ ABOUT CONTACT FAQ ALERTS

SEARCH

CODE

Refined Text Search (by Title)

BULLETIN

Refined Text Search (by Agency, Issue, etc)

BROWSE

CODE

- 61 REVENUE
- 64 SECURITIES
- 67 TRANSPORTATION
- 70 WEIGHTS, MEASURES AND STANDARDS
- 101 GENERAL ASSEMBLY

BULLETIN

- Volume 50
- Volume 49
- Volume 48
- Volume 47

VIEW CURRENT ISSUE of the BULLETIN

Volume 50 Number 27
Saturday, July 4, 2020

The information for the *Pennsylvania Code* included at this website has been derived directly from the *Pennsylvania Code*, the Commonwealth's official publication of rules and regulations. Cite all material in the *Pennsylvania Code* by title number and section number. Example: 1 Pa. Code § 17.51.

The information for the *Pennsylvania Bulletin* included at this website has been derived directly from the *Pennsylvania Bulletin*, the Commonwealth's official gazette for information and rulemaking. The latest published information may be accessed every Friday at 9 a.m. EDT. Cite all material in the *Pennsylvania Bulletin* by volume and page number. Example: 17 Pa.B. 639.

Disclaimer and Terms of Use

No part of the information on this website may be reproduced for profit or sold for profit. Please direct suggestions or comments to webmaster@PaBulletin.com.

Questions regarding a regulation or notice should be directed to the promulgating agency.

Published and distributed by Fry Communications, Inc. in cooperation with the Legislative Reference Bureau under the policy, supervision and direction of the Joint Committee on Documents.

COMMONWEALTH OF PENNSYLVANIA

No statutes or acts will be found at this website.

The *Pennsylvania Code* website reflects the *Pennsylvania Code* changes effective through 50 Pa.B. 2244 (April 25, 2020).

The *Pennsylvania Bulletin* website includes the following:
Rulemakings by State agencies; Proposed Rulemakings by State agencies; State agency notices; the Governor's Proclamations and Executive Orders; Actions by the General Assembly; and Statewide and local court rules.

Scroll down to "67"

PA CDL Regulations

← → C pacodeandbulletin.gov/Display/pacode?titleNumber=067&file=/secure/pacode/data/067/067toc.html&searchunitkeywords=&operator=OR&title=null ☆ ⓘ ⋮

HOME SEARCH - ABOUT CONTACT FAQ ALERTS

Search Print Full Screen

PENNSYLVANIA CODE

COMMONWEALTH OF PENNSYLVANIA

No statutes or acts will be found at this website.

The Pennsylvania Code website reflects the Pennsylvania Code changes effective through 50 Pa.B. 2826 (May 30, 2020).

EMAIL ALERTS

TITLE 67

TRANSPORTATION

PART I. Department of Transportation

Subpart A. **Vehicle Code Provisions**

Article I. **Preliminary Provisions**

Chapter 1. [Reserved] 📄

Article II. **Title**

Chapter 11. **Implements of Husbandry** 📄

Chapter 13. **Special Mobile Equipment** 📄

Chapter 15. **Authorized Vehicles and Special Operating Privileges** 📄

Chapter 17. **Authorization to Verify Identification Number** 📄

Chapter 19. **Specially Constructed Vehicles, Reconstructed Vehicles and Street Rods** 📄

Chapter 21. [Reserved] 📄

Chapter 23. **Delivery of Certificates of Title** 📄

Article III. **Registration**

Chapter 41. **Registration Criteria** 📄

Chapter 43. **Temporary Registration Cards and Plates** 📄

Chapter 45. [Reserved] 📄





















Scroll down to "231"

Bottom


PA CDL Regulations

HOME SEARCH - ABOUT CONTACT FAQ ALERTS

Search Print Full Screen

Chapter 211. [Reserved] 
Chapter 212. Official Traffic-Control Devices 
Chapter 213. Snow Emergency Routes 
Chapter 214. Highway Safety Corridors—Statement of Policy 
Chapter 215. Special Highway Conditions 
Chapter 217. [Reserved] 
Chapter 219. Proof of Financial Responsibility 
Chapter 221. Obligations of Insurer and Vehicle Owners 
Chapter 223. Self-Insurance 
Chapter 225. Installment Payment of Judgments 
Chapter 227. Seizure of Registration Plate and Card and Drivers' License 
Chapter 229. Interstate Motor Carrier Safety Requirements 
Chapter 231. Intrastate Motor Carrier Safety Requirements 
Chapter 233. Transportation Enhancement Grants from Automated Red Light Enforcement System Revenues 
Article IX. Miscellaneous Provisions
Chapter 251. Location of Replacement VIN Plates 
Chapter 253. Salvors 
Chapter 255. Messenger Services 
Chapter 257. Inspection and Certification of Electric Mass Transit Vehicles 
Chapter 259. [Reserved] 
Subpart B. Nonvehicle Code Provisions
Article I. Vehicle-Related
Chapter 401. Mobile Home Titling 

Scroll down to "231"



COMMONWEALTH OF PENNSYLVANIA

No statutes or acts will be found at this website.

The Pennsylvania Code website reflects the Pennsylvania Code changes effective through 50 Pa.B. 6848 (November 28, 2020).



CDL Drug and Alcohol Testing Required

- Each CDL employer must provide the following tests for its CDL employees:
 - post-accident,
 - return-to-duty and follow-up (both of which are to be observed if for drug tests),
 - random,
 - pre-employment, and
 - probable cause (which is only effective after taking a probable cause training class).

CDL Drug and Alcohol Testing Required

- Today's class allows you to implement the probable cause authority as is required for CDL employers.
- At a minimum, CDL employers **MUST** have any employee(s) with supervisory responsibility over CDL employees, such as roadmasters, managers, foremen, etc., take this class.

CDL Drug and Alcohol Testing Required

- All CDL drivers **can (and should)** take this class so they, too, can help the township administer their probable cause test responsibilities.
- If so, townships are encouraged to put in their meeting minutes those employees who they appoint to do this task after having completed a probable cause training class.

CDL Drug and Alcohol Testing Required

- Publicizing this information lets all your CDL employees know who they can turn to should they see a safety issue for which a probable cause investigation may be needed.

CDL Drug and Alcohol Testing Required

- Each CDL employee must receive a copy of the employer's CDL drug and alcohol testing personnel policy which outlines the consequence of a positive test.
- PSATS CDL Program Form Driver Policy is used to document employee received policy.

CDL Drug and Alcohol Testing Required

- Don't have a policy?
 - The PSATS CDL Program has a sample personnel policy if you need one.
 - Send email to CDL@PSATS.org **ASAP**.

CDL Drug and Alcohol Testing Required

- CDL employers shall also maintain a copy of the controlling law and federal regulations in the employer's offices and shall be accessible to employees, upon request.
- Bookmark the following sites on one of your computers for employees to access:

CDL Drug and Alcohol Testing Required

- Link to controlling law =

www.transportation.gov/odapc/omnibus-transportation-employee-testing-act-1991

- Link to regulations =

www.fmcsa.dot.gov/regulations/title49/b/5/3/list?filter=Drug+and+Alcohol+Testing

CDL Drug and Alcohol Testing Rates

- **Currently**, each FMCSA CDL (and FTA and FRA) employer must RANDOMLY test a minimum of **50%** of their CDL employees for drugs and **10%** for alcohol each year or be in a pool such as the PSATS CDL Program which achieves these minimum testing numbers.

FMCSA Clearinghouse - Employers

- All CDL employers must register with the Clearinghouse
 - Create account at login.gov
 - Then register for Clearinghouse
 - If you are a member of the PSATS CDL Program, enter “PSATS CDL Program” when asked to identify your “third-party testing consortium” and then “Yes” to the next three questions

FMCSA Clearinghouse - Employers

Why? Safety!

The purpose of the Clearinghouse is to provide CDL employers with the real-time ability to determine if any of their CDL drivers are ineligible to operate vehicles as a result of a positive drug or alcohol test, or having engaged in other disqualifying conduct, at this employer or at any other employer.

FMCSA Clearinghouse - Employers

How? Check (= query)!

1. Time of Hire = Employer must check with Clearinghouse before hiring new CDL employee
2. Annually = Employer must check with Clearinghouse once a year for all CDL employees

FMCSA Clearinghouse – Drivers

- CDL drivers only need to register with the Clearinghouse
 - When they apply for a new job
 - or
 - When a limited query comes back “hot”

Employer and Driver Clearinghouse Instructions

The PSATS CDL Drug & Alcohol Testing Program



Join CDL Program
Click here for a listing of current CDL regulations with testing rules used for a program.



Test Costs
Click here for PSATS CDL Program drug and alcohol test costs.



On site Training
Click here for PSATS CDL Program drug and alcohol test costs.



Changing Rosters
Click here for instructions on changing employee rosters in PSATS Connect.



CDL Documents
Click here for a listing of current documents and forms.



Testing Sites
Click here for PSATS CDL Program drug and alcohol testing sites.



Scheduling Tests
Click here for instructions on how to schedule tests for current CDL and Prev-CDL drug & alcohol tests.



Order Drug Test Forms
Click here for instructions on how to order CDL and Prev-CDL drug test forms.



Education
Click here for a listing of current education, training, and testing sites.



Login to Account
Click here for detailed instructions on logging in to your PSATS CDL Program account.



Test Results
Click here for detailed instructions on obtaining CDL test results.



PSATS Clearinghouse
Click here for PSATS Clearinghouse.

Click on the truck button and then select "Item J" under Member Information Forms

Non-CDL Drug and Alcohol Testing

Employers can test their non-CDL employees.

Many townships have found they needed these tests =

1. Random
 - Pulled just like CDL employees
 - Driving employer non-CDL vehicles

Non-CDL Drug and Alcohol Testing

2. Pre-employment

- When hiring any new non-CDL employee

3. Post-accident

- To help defend against frivolous lawsuits if CDL post-accident test is not otherwise required
- Same for those driving non-CDL vehicles

4. Probable Cause

- Policy must be in place before requiring the test

Non-CDL Drug and Alcohol Testing

- Public employers need the consent of their employees before they can do non-CDL testing.
 - At time of hire
 - At time of CBA
 - During employment with consent
- The PSATS CDL Program provides this service.
- **Contact us for assistance** in this matter.

Contact the PSATS CDL Program for...

- General questions about federal or Pennsylvania regulations regarding CMV/CDL employees.
- Specific questions about the PSATS CDL Program, enrollment information, or username or login support for your Myescreen.com account, or Clearinghouse assistance.

Myescreen.com



MYeSCREEN

User Name

[Forgot User Name?](#)

Password

[Forgot Password?](#)

LOGIN

By signing in you are agreeing to our [Terms and Conditions](#) and [eScreen Privacy Policy](#)



Contact the PSATS CDL Program for...

(P) 800-235-7579

(E) cdl@psats.org

(I) CDL.PSATS.org

CDL Probable Cause Employee Training

- Each employer must train each person who supervises CDL employees (and may train other employees such as road crews, authority personnel, and parks department staff) in probable cause identification techniques or have them attend a qualified training session. (49 CFR Part 382.603)

CDL Probable Cause Employee Training

- Attendance at today's training qualifies you to administer probable cause tests. You only need to attend this training once. No continuing education is currently required. Keep your attendance certificate in your personnel files.

CDL Probable Cause Employee Training

If you know someone who needs to attend this class, get them to register for the next class **tomorrow at 1 p.m.**

Register at Learn.PSATS.org.

CMV/CDL Records Management Training Class

More information about the paperwork necessary to ensure that you are employing safe drivers and maintaining safe vehicles can be obtained by attending the PSATS CDL Program's "CMV/CDL Records Management" training course.

CMV/CDL Records Management Training Class

If you know someone who needs to attend this class, get them to register for the next class which is **tomorrow at 9 a.m.**

Register at Learn.PSATS.org.

Federally-Mandated Probable Cause Training for Supervisors of CDL Employees

- **49 CFR 382.603 - Training for supervisors:**
 - **IMPORTANT!** This training will be used by the employer to determine whether enough reasonable suspicion exists to require a CDL employee to undergo probable cause testing.
 - If subsequent test is positive and your policy calls for termination, employee could lose job...

Federally-Mandated Probable Cause Training for Supervisors of CDL Employees

- **49 CFR 382.603 - Training for supervisors:**
 - The required observations for reasonable suspicion testing shall only be made by a supervisor or company official who is trained in accordance with 49 CFR 382.603.

Federally-Mandated Probable Cause Training for Supervisors of CDL Employees

- **49 CFR 382.603 - Training for supervisors:**
 - The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not also conduct the alcohol test of the driver.

Prohibited Conduct and Probable Cause Testing

- Federal regulations at 49 CFR 382.307 **require** a CDL driver to submit to a drug or alcohol test when the employer has reasonable suspicion to believe that the employee may have engaged in prohibited conduct **while on-duty**.

Prohibited Conduct and Probable Cause Testing

- Identification of such employees who may have engaged in any of these prohibited actions **while on-duty** requires a probable cause investigation and the possible ordering of a drug or alcohol test of that employee by a trained person.

Safety-Sensitive Functions

- The following slides identify when a CDL employee is considered **on-duty** (i.e., or “performing safety-sensitive functions”) and when **prohibited conduct is in effect**.

Safety-Sensitive Functions

- These employees must not engage in prohibited conduct during these times. Belief that an employee may have engaged in such conduct must subject them to a probable cause investigation and possible test.

When is an employee
on-duty?

Safety-Sensitive Functions

- “Safety-Sensitive Functions” (as defined by 49 CFR 382.107) means all on-duty time from when a driver begins to work or is required to be in readiness to work until relieved from work, and shall include the following activities:

Safety-Sensitive Functions

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 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;

Safety-Sensitive Functions

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;
5. All time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle (#1);

Safety-Sensitive Functions

6. All time loading or unloading a commercial motor 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 and unloaded.

What conduct is prohibited
while on-duty?

Prohibited Conduct – Alcohol Concentration

- No driver shall report for duty or perform safety-sensitive functions while having a breath alcohol concentration of 0.04 grams of alcohol per 210 liters of breath or greater per 49 CFR 382.201.
- 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. (#2, 3, 4, 5)

Prohibited Conduct - On-Duty Alcohol Use

- No driver shall use alcohol while performing safety-sensitive functions per 49 CFR 382.205.
- 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.

Prohibited Conduct - Pre-Duty Alcohol Use

- No driver shall perform safety-sensitive functions within four hours after using alcohol per 49 CFR 382.207.
- 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.

Prohibited Conduct - Post-Accident Use

- No driver required to take a post-accident alcohol test under 49 CFR 382.303 shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first, per 49 CFR 382.209. (#6)
- Alcohol test must be done within 8 hours and drug test must be done within 32 hours of accident.

Prohibited Conduct – Refusal to Test

- No driver shall refuse to submit to a probable cause, pre-employment, random, return-to-duty, follow-up, or post-accident test per 49 CFR 382.211.
- No employer shall permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.
- Refusal to test is handled like a positive test.

Prohibited Conduct - Controlled Substance Use

- 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 1 per 49 CFR 382.213(a).

Prohibited Conduct - Controlled Substance Use

- These drugs, substances, or chemicals are defined as drugs with no currently accepted medical use and a high potential for abuse.
- Some examples of Schedule I drugs are:
 - Heroin
 - LSD
 - Marijuana
 - Ecstasy

Prohibited Conduct - Controlled Substance Use

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 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 per 49 CFR 382.213(b).

Prohibited Conduct - Controlled Substance Testing

- 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 per 49 CFR 382.213(c). (#7)
- An employer may require a driver to inform the employer of any therapeutic drug use per 49 CFR 382.213(d). (#8)

FYI CBD

- FMCSA requires testing for marijuana and not CBD.
- However, any product, including “Cannabidiol” (CBD) products, with a concentration of more than 0.3% THC, will be classified as marijuana, a Schedule I drug under the Controlled Substances Act and thus illegal for CDL drivers.

FYI CBD

- The labeling of many CBD products may be misleading because the products could contain higher levels of THC than what the product label states.
- The US Food and Drug Administration (FDA) does not currently certify the levels of THC in CBD products, so there is no Federal oversight to ensure that the labels are accurate.

FYI CBD

- FMCSA testing does not authorize the use of Schedule I drugs, including marijuana, for any reason.
- CBD use is not a legitimate medical explanation for a laboratory-confirmed marijuana positive result. Therefore, Medical Review Officers will verify a drug test confirmed at the appropriate cutoffs as positive, even if an employee claims they only used a CBD product.

FYI CBD

- It remains unacceptable for any safety-sensitive employee subject to the Department of Transportation's drug testing regulations to use marijuana. Since the use of CBD products could lead to a positive drug test result, Department of Transportation-regulated safety-sensitive employees should exercise caution when considering whether to use CBD products.

Prohibited Conduct – Positive Drug Test

- No driver shall report for duty, remain on duty or perform safety-sensitive functions if the driver tests positive for drugs or has adulterated or substituted a test specimen per 49 CFR 382.215. (#9, 10)
- Employee must be immediately removed from safety-sensitive service upon employer receipt of such notification.

Prohibited Substances

- Alcohol
- Controlled Substances:
 - Marijuana
 - Cocaine
 - Opiates
 - Amphetamines
 - Phencyclidine (PCP)

Prohibited Substances

- Recent Additions to Controlled Substance Tests:
 - OxyContin®
 - Percocet®
 - Vicodin®
 - Dilaudid®

Prohibited Conduct and Probable Cause Testing

- An employer shall require a CDL driver to submit to an alcohol and/or drug test when a trained employee has probable cause to believe that the driver has engaged in prohibited conduct while performing safety-sensitive functions.

Prohibited Conduct and Probable Cause Testing

- Proof of prohibited conduct not required - you only need to document what has led you to believe the employee may have engaged in prohibited conduct while performing safety-sensitive functions.

Prohibited Conduct and Probable Cause Testing

- You are not evaluating whether employees are drunk or on drugs -- that is what the test will determine.
- You are only documenting what has led you to believe an employee may have engaged in prohibited conduct while performing safety-sensitive functions.

Prohibited Conduct and Probable Cause Testing

- The reason employers must test employees who may have engaged in prohibited conduct is to ensure they are not “knowingly” using an employee who is impaired by either alcohol or controlled substances.
- By taking a test, the employer then “knows” if the employee is impaired and thus ineligible to operate CMVs.

Prohibited Conduct and Probable Cause Testing

- It is important to be familiar with the process outlined in the “Probable Cause” form because strict adherence to an established process is critical to defending your investigation.
- The employer is required to supply the form to be used when conducting a probable cause investigation.

Prohibited Conduct and Probable Cause Testing

- We will now discuss the procedure a trained person should use to conduct a probable cause investigation.
- The investigation and ordering of a test can only be done by the employer's trained personnel. Attendance at this PSATS CDL Program workshop provides this training.

Prohibited Conduct and Probable Cause Testing

- For the next three slides, refer to the “Probable Cause Form” handout (#11).
- This is the form that you should use when evaluating whether a CDL employee should be sent for a probable cause test if you believe that employee may have engaged in prohibited conduct.

Prohibited Conduct and Probable Cause Testing

- The employer's determination that reasonable suspicion exists must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver as per 49 CFR 382.307.
- The observations may include indications of the chronic and withdrawal effects of controlled substances.

Prohibited Conduct and Probable Cause Testing

- “Specific” means you can separate it from other behavior.
- “Contemporaneous” means you observe the behavior now, while the employee is on the job.
- “Articulable” means you can describe the behavior.

Prohibited Conduct and Probable Cause Testing

- Page 3 of the “Probable Cause” form provides examples of “specific, contemporaneous, articulable observations” for your use in recording the needed observations.

Prohibited Conduct and Probable Cause Testing

- The required observations for probable cause testing shall only be made by persons trained in accordance with the federal regulations.
- The trained employee who makes the determination that probable cause exists to conduct an alcohol test shall not also conduct the alcohol test of the driver.

Probable Cause Investigation

Do:

- Discuss face-to-face and in private
- Keep a safe distance
- Inquire and observe
- Express concern for both the employee and public safety
- Refer to the employer's personnel policy
- Describe observations that prompted concern

Probable Cause Investigation

- Stick to objective facts
 - avoid feelings, hunches, or beliefs
- Explain the need for the test
- Focus on performance issues, not personal
- Be respectful
- Be brief and to the point
- Protect employee's confidentiality

Probable Cause Investigation

Don't:

- Be confrontational or argumentative
- Solicit a confession
- Diagnose employee as having a problem
- Accuse an employee of illegal drug use

Physical and Behavioral Indicators of Drug Abuse and Alcohol Use

- For this slide, refer to the handout on drug and alcohol behavioral and physical signs. (#12, 13)
- This chart identifies common physical and behavioral characteristics associated with use of these prohibited substances.

Probable Cause Testing Procedures

- Now we will discuss the actual probable cause alcohol and drug testing procedures.
- An employee being evaluated for a probable cause test has a right to know what the testing procedures will be. However, this should not unnecessarily delay the employee from taking the test.

Testing Procedure -- Alcohol

1. Breath alcohol analyzer is reset to zero.
2. Employee selects mouthpiece.
3. Employee provides breath sample.
4. If result is <0.02 grams of alcohol per 210 liters of breath, test is negative, employee returns to work. If ≥ 0.02 , employee retested in 15 minutes.
5. If second test <0.02 , test negative. If second test ≥ 0.02 and <0.04 , employee is removed from safety-sensitive functions for 24 hours.

Testing Procedure -- Alcohol

6. If second test ≥ 0.04 , test is positive, and employee immediately removed from safety-sensitive functions until a negative return-to-duty test is obtained.
7. Employee can be fired if employer's policy is to terminate on a positive test.
8. Employer will be notified of positive test, and employee returns results to employer.

Testing Procedure -- Alcohol

9. Each driver who has engaged in prohibited alcohol conduct shall be advised by the employer of the resources available for evaluating and resolving problems associated with alcohol misuse.
10. Employer to provide employee with phone number to obtain a counselor - American Substance Abuse Professionals at (888) 792-2727.
11. Employee must get the selected SAP to agree to treat them in writing in the Clearinghouse.

Alcohol Educational Resources

www.drugabuse.gov/publications/term/224/Posters

drugpubs.drugabuse.gov/publication-series/nida-posters

www.sapaa.com/page/wp_dfw_p_materials

www.workplace.samhsa.gov/pdf/workplace-kit.pdf

www.drugfreeworld.org/download.html

Testing Procedure -- Drugs

1. Employee provides urine sample.
2. Sample is split into two bottles -- one primary, one secondary.
3. Primary bottle tested. If the primary sample tests negative, employer notified by email of negative test.

Testing Procedure -- Drugs

4. If primary sample positive, employee may decide to test second sample at own expense after consultation with MRO.
5. If second sample is negative, the employer is notified by email of a negative test.
6. If second sample is positive, the employer is notified by email of a positive test.

Testing Procedure -- Drugs

7. Immediately upon employer receipt of such notification, employee must be removed from safety-sensitive functions until a negative (observed) return-to-duty test is obtained.
8. Employee can be fired if employer's policy is to terminate on a positive test.

Testing Procedure -- Drugs

9. Each driver who has engaged in prohibited drug conduct shall be advised by the employer of the resources available for evaluating and resolving problems associated with drug use.
10. Employer to provide employee with phone number to obtain a counselor - American Substance Abuse Professionals at (888) 792-2727.
11. Employee must get the selected SAP to agree to treat them in writing in the Clearinghouse.

Drug Educational Resources

www.drugabuse.gov/publications/term/224/Posters

drugpubs.drugabuse.gov/publication-series/nida-posters

www.sapaa.com/page/wp_dfwf_materials

www.workplace.samhsa.gov/pdf/workplace-kit.pdf

www.drugfreeworld.org/download.html

Inability to Provide Alcohol Sample?

- If an employee is unable to provide the necessary minimum amount of breath for an alcohol test, they will be given another chance.
- Failure to provide a sample after a second chance will be deemed a positive test result for “refusal to test”.

Inability to Provide Drug Sample?

- If an employee is unable to provide the necessary minimum amount of urine for a drug test, they will be given up to 40 ounces of water and another 3 hours in which to provide a sample.
- They will be required to stay at the collection site and monitored.
- Failure to provide a sample after 3 hours will be deemed a positive test result for “refusal to test”.

Medical Inability to Provide Sample?

- If the employee believes that a medical condition exists which prevented completion of the test, the employee must obtain, within 5 days, an evaluation from a physician who is acceptable to the employer to determine the employee's medical ability to provide a sufficient sample.

Medical Inability to Provide Sample?

- If our doctor determines that no medical condition was found to have prevented the employee from completing test, the employee would still be positive for “refusal to test” and subject to the positive-employee guidance document.
- For more guidance, go to CDL.PSATS.org, click on red truck button, and then select “Item B” under “Guidance Documents”.

False Alcohol Positives??

- It makes no difference whether an alcohol positive is caused by cough syrup, mouthwash, or an alcoholic beverage.
- A positive alcohol test indicates alcohol use on the job, which is prohibited conduct.
- Alcohol-free products are now on the market. CDL employees should look for and buy these.

Supervisory Personnel Responsibility

- As a management official who has the authority to require an employee to submit to a probable cause drug or alcohol test, you must be aware of the signs that may indicate prohibited conduct by a CDL employee.

Why You Were Here Today. .

- You know the employee through almost daily contact.
- You should be alert to physical and behavioral indicators of on-duty prohibited conduct.
- You are fulfilling your obligation under federal regulations.

Federally-Mandated Probable Cause Training for CDL Supervisory Personnel

Questions?



Federally-Mandated Probable Cause Training for CDL Supervisory Personnel

Complaints? Let us know.

Compliments? Let our boss know!



Federally-Mandated Probable Cause Training for CDL Supervisory Personnel

Thanks for attending!



PSATS CDL Program

1-800-235-7579

CDL@PSATS.org

CDL.PSATS.org

