

**§ 382.109**

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

*Screening test (or initial test)* means:

(1) In drug testing, a test to eliminate “negative” urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs.

(2) In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

*Stand-down* means the practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test results.

*Violation rate for random alcohol testing* means the number of 0.04 and above random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of random alcohol screening tests (including refusals) conducted under this part.

[66 FR 43103, Aug. 17, 2001, as amended at 68 FR 75458, Dec. 31, 2003]

**§ 382.109 Preemption of State and local laws.**

(a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement in this part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees, employers, or the general public.

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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.