

**§§ 199.203–199.205**

**49 CFR Ch. I (10–1–11 Edition)**

**§§ 199.203–199.205 [Reserved]**

**§ 199.213 [Reserved]**

**§ 199.209 Other requirements imposed by operators.**

(a) Except as expressly provided in this subpart, nothing in this subpart shall be construed to affect the authority of operators, or the rights of employees, with respect to the use or possession of alcohol, including authority and rights with respect to alcohol testing and rehabilitation.

(b) Operators may, but are not required to, conduct pre-employment alcohol testing under this subpart. Each operator that conducts pre-employment alcohol testing must—

(1) Conduct a pre-employment alcohol test before the first performance of covered functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of covered functions);

(2) Treat all covered employees the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others);

(3) Conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test;

(4) Conduct all pre-employment alcohol tests using the alcohol testing procedures in DOT Procedures; and

(5) Not allow any covered employee to begin performing covered functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

[Amdt. 199–9, 59 FR 7430, Feb. 15, 1994, as amended by Amdt. 199–19, 66 FR 47119, Sept. 11, 2001]

**§ 199.211 Requirement for notice.**

Before performing an alcohol test under this subpart, each operator shall notify a covered employee that the alcohol test is required by this subpart. No operator shall falsely represent that a test is administered under this subpart.

**§ 199.215 Alcohol concentration.**

Each operator shall prohibit a covered employee from reporting for duty or remaining on duty requiring the performance of covered functions while having an alcohol concentration of 0.04 or greater. No operator having actual knowledge that a covered employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform or continue to perform covered functions.

**§ 199.217 On-duty use.**

Each operator shall prohibit a covered employee from using alcohol while performing covered functions. No operator having actual knowledge that a covered employee is using alcohol while performing covered functions shall permit the employee to perform or continue to perform covered functions.

**§ 199.219 Pre-duty use.**

Each operator shall prohibit a covered employee from using alcohol within four hours prior to performing covered functions, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report for duty. No operator having actual knowledge that a covered employee has used alcohol within four hours prior to performing covered functions or within the time period after the employee has been notified to report for duty shall permit that covered employee to perform or continue to perform covered functions.

**§ 199.221 Use following an accident.**

Each operator shall prohibit a covered employee who has actual knowledge of an accident in which his or her performance of covered functions has not been discounted by the operator as a contributing factor to the accident from using alcohol for eight hours following the accident, unless he or she has been given a post-accident test under §199.225(a), or the operator has determined that the employee's performance could not have contributed to the accident.