

Agenda Item No. 10**ADDENDUM****Additional Requirements For Employees with Commercial Driver's Licenses (CDL).**

The Omnibus Transportation Employee Testing Act of 1991 requires testing for alcohol and controlled substances by any commercial motor vehicle operator having a North Carolina Commercial Driver's License under the circumstances set forth below.

These requirements are mandatory for all Town employees operating a vehicle requiring a CDL. All Department of Health and Human Services (DHHS) guidelines shall be followed with controlled substance testing conducted by a laboratory certified by the Substance Abuse and Mental Health Services Administration (SAMHSA).

Alcohol testing shall be conducted by a Breath Alcohol Technician (BAT) trained in accordance with Department of Transportation requirements and shall be conducted using an Evidential Breath Testing (EBT) device.

The employees of the Town operating a commercial vehicle shall, in addition to all other requirements of the Town's Drug Policy and Procedure as applicable to all employees, comply with all rules and regulations set forth in the following provisions.

- I. Who Must Be Tested for Alcohol and Drugs pursuant to Department of Transportation requirements:
 - A. Drivers of commercial motor vehicles with a gross vehicle weight rating (GVWR) of 26,001 pounds or more.
 - B. Drivers of commercial motor vehicles with a gross combination weight rating of 26,001 pounds or more, including a towed vehicle with a gross vehicle weight rating of 10,000 or more.
 - C. Drivers of motor vehicles of any size transporting hazardous materials and amounts requiring placarding.
- II. Definitions
 - A. Alcohol Test - A test for the presence of alcohol in the body pursuant to USDOT standards and determined by the use of a Breath Alcohol Test.
 - B. Drug Test - A test for the presence of the following drugs or drug metabolites in the urine or blood of a driver/employee pursuant to USDOT standards and cut-off levels:

1. Amphetamines (including Methamphetamine)
 2. Cannabinoids (Marijuana)
 3. Cocaine (including Crack)
 4. Opiates
 5. Phencyclidine (PCP)
 6. Other drugs may also be included as required by Federal law as from time to time amended or pursuant to Town policy if broader than USDOT requirements.
- C. Negative Test - A drug test which does not show the presence of drugs at a level specified to be a positive test. An alcohol test which indicates a breath alcohol concentration of less than 0.02.
- D. Positive Test - A drug test which indicates the presence of a drug or drug metabolite in the urine or blood at the level specified to be positive by the Substance Abuse and Mental Health Services Administration (SAMHSA). All positive results will be confirmed using a different technology than the first test, such as the Gas Chromatography/Mass Spectrometry (GCMS) process. For a test result to be reported as positive, this confirmation must also be positive for the presence of drugs. An alcohol test which indicates a breath alcohol concentration of 0.04 or higher.
- E. Refusal To Submit - Occurs when a driver/employee.
1. fails to provide an adequate amount of urine for a drug test without a valid medical explanation after he has received notice of the test; or
 2. fails to provide an adequate amount of breath for an alcohol test without a valid medical explanation after he has received notice of the test; or
 3. any conduct evidencing a refusal to be tested.
- F. Safety-Sensitive Function - The following list of activities constitutes safety-sensitive functions pursuant to USDOT requirements:
1. Driving a commercial motor vehicle.
 2. Inspecting, servicing, or conditioning any commercial motor vehicle.
 3. All time at a Town facility or other public property waiting to operate a commercial motor vehicle.
 4. Performing all other functions in or upon any commercial motor vehicle except resting in a sleeper berth.

5. Loading or unloading a vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle.
 6. All time spent performing the driver requirements associated with an accident.
 7. Repairing, obtaining assistance, or remaining in attendance of a disabled commercial motor vehicle.
- G. EBT - Evidential Breath Testing Device - "breathalyzer", approved for alcohol testing by USDOT.
- H. Substance Abuse Professional (SAP) - Licensed physician, or a licensed certified psychologist, social worker, employee assistance professional or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission, with knowledge of a clinical experience in diagnosis and treatment of alcohol and substance-abuse disorders.

III. Drug and Alcohol Tests Required by the Regulations

- A. Pre-employment Testing - Drug testing shall be conducted prior to the first time a driver performs safety-sensitive functions. Such testing may be conducted before or after a conditional job offer has been made. This testing is required of all new applicants as well as current employees transferring into positions requiring a CDL and the performance of safety-sensitive functions. The test results must indicate a verified negative drug test to be considered for employment or reassignment. Each applicant must sign an authorization allowing release of drug and alcohol testing information from all previous employers within the last two (2) years. This is a mandatory requirement imposed by Federal law. An application will be deemed incomplete until such authorization is provided.
- B. Post Accident Testing - Required for any surviving driver/employee who was performing safety-sensitive functions with respect to a Town vehicle when:
1. Any person in the accident has been fatally injured; or
 2. The driver receives a moving violation citation under State or local law arising from the accident.
 3. Bodily injury requiring immediate medical treatment away from the scene of the accident.
 4. Vehicle incurring disabling damage as a result of accident so as to be towed away from accident scene.

If at all possible, testing for drugs and alcohol should occur within two (2) hours of the accident. Otherwise, reasons for the delay must be documented. If an alcohol test required by this section is not administered within eight (8) hours of the accident, attempts to conduct the alcohol test shall stop and the reason for the inability to conduct the test shall be documented. If a drug test required by this section is not administered within thirty-two (32) hours of the accident, attempts to conduct the drug test shall stop and the reason for the inability to conduct the test shall be documented. In no event shall any necessary medical treatment be delayed or withheld in order to comply with these requirements in obtaining the required test.

- C. Random Testing - Required by law on a random, unannounced basis throughout the year on employees who perform safety-sensitive functions. Random testing for drugs and alcohol shall be conducted at the rate required by USDOT regulations. Currently, the regulations state that on an annual basis a minimum of 25 percent of the CDL holders must be tested for alcohol and 50 percent tested for drugs. Random alcohol testing only shall be limited to the time period surrounding the performance of safety-sensitive functions. Such random testing percentages may vary from time to time pursuant to amendments by the USDOT.
- D. Reasonable Suspicion Testing - Required by law when supervisor meeting USDOT training requirements believes an employee has used a prohibited drug or has misused alcohol in violation of this policy. The determination of reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odor of the driver/employee.

Testing for alcohol should occur within two (2) hours of the determination of reasonable suspicion. If the employee is unable to be tested within two (2) hours, reasons for the delay must be documented. If an alcohol test required by this section is not administered within eight (8) hours, attempts to conduct the alcohol test shall cease and the reason for the inability to conduct the test shall be documented.

- E. Return-to-Duty Testing - Must be conducted on an employee who has a positive Breath Alcohol Test or drug test as defined in this policy. An employee who has had a positive breath alcohol or drug test will not be allowed to return to duty in the performance of a safety-sensitive function until he has been evaluated by a Substance Abuse Professional (SAP) and until he tests negative on a return-to-duty test.
- F. Follow-up Testing - Must be conducted on an employee once he is allowed to return to duty following a positive alcohol or drug test. The employee will be subject to a minimum of six follow-up drug and/or alcohol tests within the first

twelve months following evaluation by the SAP and rehabilitation. Further follow-up testing may be conducted for up to an additional 48 months.

Alcohol testing shall be conducted while the employee is performing safety-sensitive functions, immediately before the employee performs safety-sensitive functions, or immediately after the employee has performed safety-sensitive functions. Drug testing shall be conducted at any time while the employee is at work.

IV. Rules of Conduct regarding drugs and alcohol

- A. No driver/employee shall report for duty or remain on duty in performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. A driver/employee having an alcohol concentration of 0.02 to 0.04 shall not be allowed to operate a Town vehicle for 24 hours.
- B. No driver/employee shall be on duty or operate a commercial motor vehicle while the driver is in possession of alcohol, including medication, food, or other alcohol containing products that are not specifically manifested to be on the vehicle.
- C. No driver/employee shall use alcohol while performing safety-sensitive functions.
- D. No driver/employee shall perform safety-sensitive functions within four hours after using alcohol.
- E. No driver/employee required to take a post-accident alcohol test as defined in this policy shall use alcohol for eight hours following the accident, or until he undergoes a post-accident alcohol test, whichever comes first.
- F. No driver/employee shall refuse to submit to an alcohol or drug test required by pre-employment, post-accident, random, reasonable suspicion, return-to-duty, or follow-up testing requirements. Such refusal shall lead to discipline up to and concluding termination.
- G. No driver/employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle. Such use and physician information must be provided to the Town.

V. Consequences

- A. No driver/employee shall perform safety-sensitive functions, including the driving of a commercial motor vehicle, if the driver has engaged in conduct prohibited by this policy.

- B. A driver/employee who does not pass the drug test will be removed from duty without pay. The driver must immediately schedule an evaluation by a Substance Abuse Professional (SAP) and must cooperate with any and all recommendations suggested by the SAP for treatment and/or follow-up. Refusal to cooperate will result in termination. The driver must have a negative drug test result before he will be allowed to return to work in the safety-sensitive position. A second occurrence of a positive drug test or subsequent positive alcohol test within a two (2) year period will result in discipline up to and including termination.
- C. A driver/employee who does not pass the Breath Alcohol Test will be removed from duty without pay. In the case of the first time the driver has a positive alcohol test result, without evidence of use during work hours, the driver must immediately schedule an evaluation by a Substance Abuse Professional (SAP) and must cooperate with any and all recommendations suggested by the SAP for treatment and/or follow-up. Refusal to cooperate will result in termination. The driver must have a negative alcohol test result before he will be allowed to return to duty. A second occurrence of a positive alcohol test or subsequent positive result for controlled substances within a two (2) year period will result in discipline up to and including termination. A driver/employee using alcohol or controlled substances during work hours or having such substances on Town property shall be immediately terminated.
- D. A driver/employee who refuses to submit to a drug or alcohol test as required by this policy will be terminated. Failure to provide an adequate testing sample will be treated as a refusal to be tested unless the driver can set forth sufficient reasons for his/her inability to provide the required sample.
- E. A driver/employee who has a confirmed Breath Alcohol Test result of 0.02-0.039 shall not be allowed to continue to perform safety-sensitive functions. The employee will be removed from duty without pay for 24-hours. The Town shall require a return-to-duty alcohol test.

VI. Additional Requirements

- A. As required by the Federal Drug-Free Workplace Act, if an employee is convicted of a violation of a criminal drug statute and the violation occurred while the employee was at work, the employee must notify his supervisor of the conviction within five (5) days after the conviction. Failure to notify the supervisor of the conviction will result in termination.
- B. All drug test results are reviewed and interpreted by a Medical Review Officer, or MRO who is a licensed physician. If the laboratory reports a positive test result to the MRO, the MRO shall contact the driver, and discuss the results with him/her. The MRO attempts to determine if there is a legitimate medical reason for the driver to have tested positive for alcohol or controlled substances. If there

is none, the test result is reported as positive. If there is a legitimate medical purpose for the use of the drug, or alcohol, the test result is reported as negative.

C. An employee who does not pass the drug or alcohol test and is terminated will not be considered for re-employment until he/she provides documentation suitable to the Town Manager that he/she has successfully completed a rehabilitation program and/or he/she passes a pre-employment or return to duty drug and/or alcohol test.

D. An applicant who does not pass the pre-employment drug test will not be eligible for hire for a period of six (6) months and until he/she passes a pre-employment drug test.

VII. Testing Procedures - shall be consistent with the requirements of 49 CFR Part 40 which requires in part as follows:

A. Drugs -

1. Testing at a certified lab. Split sample method of testing. If test result is positive, employee may request retest at a different DHHS certified laboratory. Such request must be made within 72 hours of employee being notified of a verified positive result unless employee can set forth circumstances which unavoidably prevented the timely notice for retesting. The retest shall be at the expense of employee.
2. Test cutoff levels shall be those required by USDOT as may be amended from time to time.

B. Alcohol Testing -

1. The Breath Alcohol Technician (BAT) shall be trained in the operation of the EBT.
2. The test shall be conducted so as to insure the visual privacy of the driver/employee.
3. Driver/employee must provide positive identification on entering testing location.
4. If test result is more than concentration of 0.02 a confirmation test shall be required.
5. Refusal to consent to test shall subject will employee to termination.

VIII. Requirements Upon Positive Test**A. Alcohol - Test result of .04 or greater, driver/employee must be immediately removed from safety-sensitive functions until:**

1. Employee undergoes evaluation by SAP and where necessary, rehabilitation; and
2. Substance abuse professional determines employee successfully complied with any required rehabilitation; and
3. Employee undergoes return to duty test with verified negative result.
4. Employee with alcohol level of .02 but less than .04 is not permitted to perform a safety-sensitive function for 24 hours. Follow-up testing may be required.

B. Controlled substances - Driver/Employee with a positive test result must be immediately removed from safety-sensitive function until:

1. Employee undergoes evaluation by SAP and where necessary, rehabilitation; and
2. Substance abuse professional determines employee successfully complied with any required rehabilitation, and;
3. Employee undergoes return to duty test with verified negative result.

IX. Program Representative - Employees having questions regarding the Town's Drug and Alcohol Policy or Procedures should contact _____ who is located at _____. The office telephone number is _____.**II. Amendment**

These policy provisions relating to employees with CDL's may be amended from time to time as required by law.

RECEIPT OF CDL DRUG & ALCOHOL TEST POLICY & PROCEDURES

I, _____, acknowledge receipt of my copy of the Town of Sawmills **COMMERCIAL DRIVER'S LICENSE DRUG AND ALCOHOL TESTING POLICY AND PROCEDURES**. I understand that I must read and become familiar with the contents of this policy and abide by the rules and regulations contained herein. I also acknowledge that any questions or comments I have regarding the Policy should be directed to _____ who is the Program Administrator of the Town's CDL policy.

Witness

Date

Employee Signature

Print Employee Name

Date

AUTHORIZATION TO RELEASE INFORMATION

I, _____, hereby authorize _____ to release to
(name of former employer)
the Town Manager for the Town of Sawmills any positive controlled substances test results,
alcohol test results of 0.04 or greater, and refusals to be tested, during my employment with
such former employer from two (2) years preceding the date of this authorization.

This the ____ day of _____, 1996.

Witness

Employee Signature

Employee Printed Name

Date

FHWA DRUG TESTING MLE DATA COLLECTION FORM

A. MOTOR CARRIER EMPLOYER INFORMATION

Year Covered by This Report: _____

Company: _____
Principal Place of Business for Safety: _____

Physical Address: _____

Mailing Address: _____

U.S. DOT Number: _____

ICC Number: _____

I the undersigned, certify that the information provided on this Federal Highway Administration Drug Testing Management Information System Data Collection form is, to the best of my knowledge and belief, true, correct and complete for the period stated.

Signature: _____

Date of Signature: _____

Title: _____

Phone Number: _____

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of \$10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or presentations in any matter within the jurisdiction of any agency of the United States.

The Federal Highway Administration estimates that the average burden for this report form is 2 hours. You may submit any comments concerning the accuracy of this burden to: Director, Office of Motor Carrier Standards (HCS-1), Federal Highway Administration, 400 7th St., S.W., Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2125-0543), Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES						
Employee Category	Number of FHWA Covered Employees	Number of Employees Covered by More Than One DOT Operating Administration				
		FAA	FRA	FTA	RSPA	USCG
Drivers						

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM

- All items refer to the current reporting period only (for example, January 1, 1994 - December 31, 1994).
- This report is only for testing REQUIRED BY THE FEDERAL HIGHWAY ADMINISTRATION (FHWA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT):
 - Results should be reported only for employees in COVERED POSITIONS as defined by FHWA/DOT drug testing regulations.
 - The information requested should only include testing for marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines using the standard procedures required by DOT REGULATION 49 CFR Part 40.
- Information on refusals for testing should only be reported in the table entitled "EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST". Do not include refusals for testing in other sections of this report.
- Do not include the results of any quality control (QC) samples submitted to the testing laboratory in any of the tables.
- Complete all items. DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

C. DRUG TESTING INFORMATION

Type of Test	Number of Specimens Collected	Number of Specimens Verified Negative	Number of Specimens Verified Positive for One or More of the Five Drugs	Number of Specimens Verified Positive for Each Type of Drug				
				Marijuana (THC)	Cocaine	Phencyclidine	Opiates	Amphetamines
Pre-Employment								
Random								
Post-Accident/Non-Fatal								
Post-Accident/Fatal								
Reasonable Suspicion								
Return to Duty								
Follow-up								
Number of persons denied a position as a covered employee following a verified positive drug test:								
Number of employees returned to duty during this reporting period after having failed or refused a drug test required under the FHWA rule:								

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG					
Number of Verified Positives	Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST					NUMBER
Covered employees who refused to submit to a random drug test required under the FHWA regulation:					
Covered employees who refused to submit to a non-random drug test required under the FHWA regulation:					
DRUG TRAINING/EDUCATION					NUMBER
Number of supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by FHWA drug testing regulations:					

D. ALCOHOL TESTING INFORMATION

Type of Test	Number of Screening Tests	Number of Confirmation Tests	Number of Confirmation Test Results Equal to or Greater Than 0.02, But Less Than 0.04	Number of Confirmation Test Results Equal to or Greater Than 0.04
Pre-Employment				
Random				
Post-Accident/Non-Fatal				
Post-Accident/Fatal				
Reasonable Suspicion				
Return to Duty				
Follow-up				
Number of persons denied a position as a covered employee following an alcohol test indicating an alcohol concentration of 0.04 or greater:				
Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FHWA regulations):				
Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater:				
VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION				
Number of Covered Employees	Violation	Action Taken		
	Driver used alcohol while performing safety-sensitive function.			
	Driver used alcohol within 4 hours of performing safety-sensitive function.			
	Driver used alcohol before taking a required post-accident alcohol test.			
EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST				NUMBER
Covered employees who refused to submit to a random alcohol test required under the FHWA regulation:				
Covered employees who refused to submit to a non-random alcohol test required under the FHWA regulation:				
ALCOHOL TRAINING/EDUCATION				NUMBER
Number of supervisors who have received initial training on the specific consequences physical, behavioral, and performance indicators of probable alcohol use as required by FHWA alcohol testing regulations:				

FWHA DRUG AND ALCOHOL TESTING MIS "EZ" DATA COLLECTION FORM

A. MOTOR CARRIER EMPLOYER INFORMATION

Company: _____

Year Covered by This Report: _____

Principal Place of Business for Safety: _____

Physical Address: _____

Mailing Address: _____

U.S. DOT Number: _____

ICC Number: _____

I, the undersigned, certify that the information provided on the attached Federal Highway Administration Drug and Alcohol Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct and complete for the period stated.

Signature: _____

Date of Signature: _____

Title: _____

Phone Number: _____

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of \$10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Highway Administration estimates that the average burden for this report form is 30 minutes. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Director, Office of Motor Carrier Standards (MCS-1); Federal Highway Administration, 400 7th St., S.W., Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2125-0543), Washington, D.C. 20503.

COVERED EMPLOYEES

COVERED EMPLOYEES						
COVERED EMPLOYEES						
EMPLOYEE CATEGORY	NUMBER OF FHWA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
		PAA	PRA	PTA	RSPA	USCO
Drivers	72					

C. DRUG TESTING INFORMATION

C. DRUG TESTING INFORMATION

NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE														
EMPLOYER CATEGORY	PRE-EMPLOYMENT		RANDOM		POST-ACCIDENT/ NON-FATAL		POST-ACCIDENT/ FATAL		REASONABLE SUSPICION		RETURN TO DUTY		FOLLOW-UP	
	COLL	NBO	COLL	NBO	COLL	NBO	COLL	NBO	COLL	NBO	COLL	NBO	COLL	NBO
Drivers														
Number of drivers returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FHWA rule.														

reviewed by the employer no later than 14 calendar days after the first time a driver performs safety-sensitive functions for an employer, if it is not feasible to obtain the information prior to the driver performing safety-sensitive functions. An employer may not permit a driver to perform safety-sensitive functions after 14 days without obtaining the information.

(d) If the driver stops performing safety-sensitive functions for the employer before expiration of the 14 day period or before the employer has obtained the information in paragraph (b) of this section, the employer must still obtain the information.

(e) The prospective employer must provide to each of the driver's employers within the two preceding years the driver's specific, written authorization for release of the information in paragraph (b).

(f) The release of any information under this part may take the form of personal interviews, telephone interviews, letters, or any other method of obtaining information that ensures confidentiality. Each employer must maintain a written, confidential record with respect to each past employer contacted.

(g) An employer may not use a driver to perform safety-sensitive functions if the employer obtains information on the driver's alcohol test with a concentration of 0.04 or greater, verified positive controlled substances test result, or refusal to be tested, by the driver, without obtaining information on a subsequent substance abuse professional evaluation and/or determination under § 382.401(c)(4) and compliance with § 382.309.

Subpart E—Consequences For Drivers Engaging In Substance Use-Related Conduct

§ 382.501 Removal from safety-sensitive function.

(a) Except as provided in subpart F of this part, no driver shall perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by subpart B of this part or an alcohol or controlled substances rule of another DOT agency.

(b) No employer shall permit any driver to perform safety-sensitive functions, including driving a commercial motor vehicle, if the employer has determined that the driver has violated this section.

(c) For purposes of this subpart, commercial motor vehicle means a commercial motor vehicle in commerce as defined in § 382.107, and a

commercial motor vehicle in interstate commerce as defined in part 390.

§ 382.503 Required evaluation and testing.

No driver who has engaged in conduct prohibited by subpart B of this part shall perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of § 382.605. No employer shall permit a driver who has engaged in conduct prohibited by subpart B of this part to perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of § 382.605.

§ 382.505 Other alcohol-related conduct.

(a) No driver tested under the provisions of subpart C of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for an employer, including driving a commercial motor vehicle, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no employer shall take any action under this part against a driver based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

§ 382.507 Penalties.

Any employer or driver who violates the requirements of this part shall be subject to the penalty provisions of 49 U.S.C. § 521(b).

Subpart F—Alcohol Misuse and Controlled Substances Use Information, Training, and Referral

§ 382.601 Employer obligation to promulgate 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;

(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;

(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;

(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;

(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;

(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 § 382.605;

(10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;

(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 coworker'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.

(c) Optional provision. The materials supplied to drivers may also include information on additional employer policies with respect to the use or possession of alcohol or controlled substances, including any consequences for a driver found to have a specified alcohol or controlled substance level, that are based on the employer's