

**REASONABLE SUSPICION  
CLEARINGHOUSE  
CBD**



American Bus Association

Dale Tidwell  
Consulting Practice Manager




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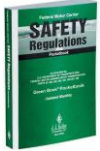

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**TRAINING OBJECTIVES**


Complete the required two-hour reasonable suspicion training for supervisors according to 49 CFR §382.603:

**§382.603 Training for Supervisors (120 min.):**

- 60 minutes of training on alcohol misuse
- 60 minutes of training on controlled substance use

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**ALCOHOL AND DRUG TESTING POLICY §382.601**

- Written policy given to each driver
- Explains DOT requirements
- Must reference information about effects of alcohol and drugs
- May include items which are company policy
- Driver must sign receipt

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### §382.307 REASONABLE SUSPICION

- Based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver
- Supervisor training (§382.603)
- Test before, during, or just after performance of safety-sensitive function (SSF)
- Written records of observation



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### WHAT'S HAPPENING

- In 2019, an estimated 35.8 million Americans aged 12 or older were illicit drug users (13% of the population)<sup>2</sup>
- The economic costs of alcohol abuse, illicit drug use, and prescription opioids are over \$520 billion a year<sup>1</sup>
- In 2016, the Drug Enforcement Agency cited prescription drugs, heroin, and fentanyl as the greatest drug-related threats in the U.S.
  - Prescription pain killers, heroin, and fentanyl killed 33,091 people in 2015
  - In 2019, 1.9% of Americans aged 12 or older had used prescription drugs non-medically in the past month<sup>2</sup>

Sources:

1 National Institute on Drug Abuse

2 SAMHSA: Results from the 2019 National Survey on Drug Use and Health: Summary of National Findings

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### §382.307 REASONABLE SUSPICION

- An employer shall **require** a driver to submit to a test when the employer has **reasonable suspicion** that the driver has violated the prohibitions of **Subpart B**
- Test **must be based on** **specific, contemporaneous, articulable observations** concerning the appearance, behavior, speech or body odors of the driver.
- The observations for controlled substances may include indications of the **chronic** and **withdrawal** effects of controlled substances

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### §382.307 REASONABLE SUSPICION

- Observing and documenting suspicious behavior:
  - Must be made by a supervisor who has received training as directed by §382.603:
    - 60 minutes on controlled substances
    - 60 minutes on alcohol
  - Certification/training are good for life

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### §382.307 REASONABLE SUSPICION

Testing time frame for alcohol:

- Within 2 hours – if not, a record of why not must be documented and on file
- Within 8 hours - if not, a record of why not must be documented and on file
- After 8 hours, attempts shall cease, and a record of why must be on file



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### §382.307 REASONABLE SUSPICION

If the driver does not get tested, he or she shall not perform any safety-sensitive function (SSF) until:

- An alcohol test is administered (with a BAC test result of less than 0.02); or
- 24 hours has elapsed.



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### §382.307 REASONABLE SUSPICION

Reasonable suspicion testing for **controlled substances**:

- An employer may request a driver to submit at any time

Documentation must be prepared and signed by the witness **within 24 hours of the observed behavior**



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### §382.307 REASONABLE SUSPICION

...based on specific, contemporaneous, articulable observations...

Do:

- Note specific/dramatic changes in behavior
- Be as clear and detailed as possible

Don't:

- Diagnose
- Accuse

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### ALCOHOL MISUSE

Alcohol is the most commonly used depressant, affecting the central nervous system by slowing down the critical functions of the brain.

Alcohol is the most abused drug in the world.



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## HOW MUCH ALCOHOL?

12 fl oz of regular beer = 8-9 fl oz of malt liquor (shown in a 12 oz glass) = 5 fl oz of table wine = 1.5 fl oz shot of 80-proof spirits ("hard liquor"—whiskey, gin, rum, vodka, tequila, etc.)

about 5% alcohol      about 7% alcohol      about 12% alcohol      about 40% alcohol

The percent of "pure" alcohol, expressed here as alcohol by volume (alc/vol), varies by beverage.

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## ALCOHOL MISUSE

Alcohol is a **depressant**, it depresses:

- The central nervous system
- Brain activity
- Muscle response
- Mental processes
- Reaction time
- Ability to concentrate
- Physical coordination and balance
- Judgment (lowers inhibitions)



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## HOW IS ALCOHOL ELIMINATED?

- 10% breath, sweat, and urine
- 90% liver:
  - Detoxifies alcohol at a rate of 0.5 oz. per hour
  - Nothing will speed/increase this rate
  - If consumed at a higher rate, blood alcohol concentration will continue to increase, causing intoxication, coma, or possibly death
  - Vomiting is the body's last defense mechanism

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## BLOOD ALCOHOL LEVELS

BAC	Affect on the Body
0.02	Slight mood change, feeling of relaxation
0.04	CDL drivers receive DUI if operating CMV and lose driving privileges for up to one year
0.06	Lowered inhibition, impaired judgment, decreased rational decision-making abilities
0.08	Legally drunk, deterioration of reaction time and control
0.15	Impaired balance, movement, and coordination. Difficulty standing, walking, talking
0.20	Decreased pain and sensation, erratic emotions (depression to anxiety to aggression)
0.30	Diminished reflexes, semi-consciousness, blackouts
0.40	Loss of consciousness, limited reflexes, anesthetic effects (coma-inducing level)
0.50	Decreased heart rate and breathing, death (alcohol poisoning)

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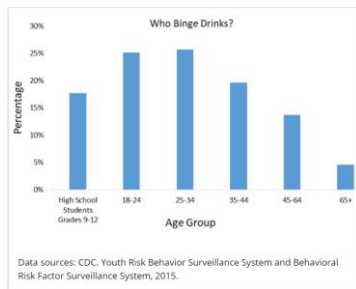
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## IMPACT OF EXCESSIVE ALCOHOL USE



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## DRUGS/CONTROLLED SUBSTANCES

The regulations have been updated (see §40.85) and the labs now test for the following drugs:

1. Marijuana metabolites
2. Cocaine metabolites
3. Amphetamines
4. Opioids
5. Phencyclidine (PCP)



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## WHY DO PEOPLE “TAKE” DRUGS?

**To feel good**

- Most abused drugs produce intense feelings of pleasure

**To feel better**

- Some people who suffer from social anxiety, stress-related disorders, and depression begin abusing drugs in an attempt to lessen feelings of distress


**To do better**

- Increasing pressure that some individuals feel to chemically enhance or improve their athletic or cognitive performance

**Curiosity and “because others are doing it”**

Source: National Institute of Health, US Department of Health and Human Services

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## HOW DO DRUGS WORK IN THE BRAIN?

- Drugs are chemicals that work in the brain by tapping into the brain’s communication system, interfering with the way nerve cells normally send, receive, and process info
- Some drugs, such as marijuana and heroin, can activate neurons because their chemical structure mimics that of a natural neurotransmitter
- Other drugs, such as amphetamine or cocaine, can cause the nerve cells to release abnormally large amounts of natural neurotransmitters or prevent normal recycling of these brain chemicals
  - This disruption produces a greatly amplified message, ultimately disrupting communication channels
  - This can be described as the difference between someone whispering into your ear and someone shouting into a microphone

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## EYES ARE THE WINDOW...


**Dilated** means the heart is pumping harder... go, go, go!



**Constricted** means the heart has slowed down... relaxing...



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**REASONABLE SUSPICION OBSERVED BEHAVIOR PROCESS**

Reasonable Suspicion  
(specific, contemporaneous, articulable)

- Observe
- Confirm
- Confront
- Test
- Document

Do not accuse or diagnose!

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**REASONABLE SUSPICION OBSERVED BEHAVIOR PROCESS**

**5-STEP APPROACH TO REASONABLE SUSPICION TESTING**

It's easy to learn all the signs of drug abuse and alcohol misuse, but putting them into practical application is something all its own. Reasonable suspicion training should include role playing, quizzes with different scenarios, and discussion on what is in accordance with federal regulations and company policy. The following 5-step approach will aid supervisors as they undertake the difficult task of determining if a reasonable suspicion test is warranted.

- 1. Observe.** Persons trained in Reasonable Suspicion must personally observe unusual/curious behavior displayed by a driver under their supervision. Supervisors may enlist the help of another trained supervisor if they are unsure whether a driver is exhibiting symptoms that clearly indicate a violation of drug or alcohol prohibitions.
- 2. Confirm.** Supervisors must confirm that the physical, behavioral, speech, and/or performance indicators being observed are consistent with what they know about substance misuse. They may not know exactly which substance the person is under the influence of, but they have enough reason to believe this is not normal behavior and the driver may be in violation of drug and alcohol prohibitions.

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**REASONABLE SUSPICION OBSERVED BEHAVIOR PROCESS**

**5-STEP APPROACH TO REASONABLE SUSPICION TESTING – cont.**

- 3. Confront.** Even though this may be tough for some supervisors, depending upon personality and level of confidence in the procedure, the supervisor must notify the driver of his/her suspicion, describing exactly what was observed and why it has prompted the drug or alcohol test. The driver must be immediately relieved from safety-sensitive functions.
- 4. Test.** Supervisors must immediately order appropriate tests. A supervisor may not conduct the alcohol test himself/herself. While it's not required by the regulations, if the test is to be conducted off-site, the supervisor or another company official should escort the driver to the testing facility because the driver should not drive to the facility if it is suspected that he/she is impaired.
- 5. Document.** Supervisors must document the observations leading to the alcohol OR controlled substance reasonable suspicion test and sign their names on the reports.

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## WHAT IS CBD?

- A natural substance derived from hemp, one of the members of the cannabis plant family
- Closely linked to marijuana
- Blended into oils and food-based items
- Becoming very popular and more acceptable (commercials, billboards, in convenience stores)

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## RESEARCH ON CBD SUGGESTS:

- May relieve anxiety
- May relieve stress
- May help manage pain (MS, cancer, joint pain, arthritis)
- May reduce seizures
- May improve mental health

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## HEMP AND MARIJUANA COMPARISON

### Hemp (CBD)

- Smokable
- Oils
- Edibles
- Gels
- Supplements
- Gummies
- Cannabinoid
- Legal federally, but still illegal in some states

*\*Contains levels of THC*

### Marijuana (THC)

- Smokable
- Oils
- Edibles
- Capsules
- Gummies
- Cannabinoid
- Illegal federally, but legal in some states

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The Food and Drug Administration (FDA) has not approved CBD products

- Leads to improper (inaccurate) labeling
- No standard or consistency
- Elevated THC levels >0.3% (must be less than this amount to be legal)

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### TRANSPORTATION INDUSTRY ISSUES

- Marketed to professional drivers
- Gaining acceptance/popularity in society
- Not approved by the FDA regulation/label issues
- CBD contains levels of THC
- Readily available

*Can cause drivers to test positive!*

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### DOT OFFICE OF DRUG AND ALCOHOL POLICY AND COMPLIANCE NOTICE FEBRUARY 18, 2020

1. The Department of Transportation requires testing for marijuana and not CBD.
2. 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 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. The FDA has cautioned the public that: "Consumers should beware purchasing and using any [CBD] products." The FDA has stated: "It is currently illegal to market CBD by adding it to a food or labeling it as a dietary supplement."\* Also, the FDA has issued several warning letters to companies because their products contained more CBD than indicated on the product label. \*\*
3. The Department of Transportation's Drug and Alcohol Testing Regulation, Part 40, does not authorize the use of Schedule I drugs, including marijuana, for any reason. Furthermore, 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.

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## WHAT IS THE FMCSA CDL DRUG & ALCOHOL CLEARINGHOUSE?

A secure, online database that will give employers and other authorized users real-time information about commercial driver's license (CDL) and commercial learner's permit (CLP) holders' drug and alcohol program violations



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## HOW WILL EMPLOYERS USE THE CLEARINGHOUSE?

1. Report drug and alcohol violations
  - Including alcohol test results with a concentration of .04 or greater
  - Refusal to take an alcohol or drug test
2. Report negative return-to-duty test results and the successful completion of a driver's follow-up testing plan
3. Conduct queries
  - Full: pre-employment (driver gives consent)
  - Limited: annually

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## HOW WILL OTHERS USE THE CLEARINGHOUSE?

ACTION	TIMEFRAME
<p><b>Providing Consent</b> Drivers will be required to log into the Clearinghouse and provide electronic consent before a current or prospective employer can conduct a full query of a driver's Clearinghouse record.</p>	<p>No specific timeframe for consenting to pre-employment or ad hoc full queries.</p> <p>If a limited query returns that records were found, a full query must be conducted on the driver within 24 hours, or the driver must be removed from safety-sensitive functions.</p>
<p><b>Reporting Violations</b> Medical review officers (MROs) will be required to report verified positive, adulterated, or substituted controlled substances test results, as well as refusals to take a drug test.</p>	<p>Within two business days of the verification or determination.</p> <p>Within one business day of making any change to the results report, MRO must report that changed result.</p>
<p><b>Reporting on RTD Progress</b> Substance abuse professionals (SAPs) will be required to report to the Clearinghouse when the initial driver assessment is completed and when the driver is determined to be eligible for RTD testing.</p>	<p>By the close of the business day following the date of the initial assessment.</p> <p>By the close of the business day following the determination the driver is eligible for RTD testing.</p>

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## HOW WILL EMPLOYERS USE THE CLEARINGHOUSE?

Reporting Entity	Violations Reported to the Clearinghouse	Timeframe for Reporting
Prospective/Current Employer of CDL Driver	An alcohol confirmation test with a concentration of 0.04 or higher	Employers must report any drug and alcohol program violation information by the close of the third business day following the date on which the employer obtained the information.
	Refusal to test (alcohol) as specified in 49 CFR § 40.261	
	Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR § 40.191	
MRO	Actual knowledge of a drug or alcohol violation, as defined in 49 CFR § 382.107	MROs must report results within two business days of making a determination or verification of a Department of Transportation (DOT)-required drug test. Any changes to the results report of a verified drug test must be reported to the Clearinghouse within one business day of making the changes.
	Verified positive, adulterated, or substituted drug test result	
	Refusal to test (drug) requiring a determination by the MRO as specified in 49 CFR § 40.191	



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## THANK YOU FOR ATTENDING!



*If you have any questions:*

*Dale Tidwell, CDS*

*[jtidwell@jjkeller.com](mailto:jtidwell@jjkeller.com)*

*318-550-1732*

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