Guidance on the applicability of the Clearinghouse requirement to FTA-regulated employers and drivers

## Q&A

Under 49 CFR § 382.103(d)(1), the requirements of 49 CFR Part 382 do not apply to employers and their drivers “required to comply with the alcohol and/or controlled substances testing requirements of part 655 (Federal Transit Administration (FTA) alcohol and controlled substances testing regulations).”

Does this mean that FTA-regulated employers and drivers are exempt from the Clearinghouse requirements?

## Guidance:

It depends. Drivers who perform only FTA-regulated safety-sensitive functions are exempt from Part 382, including the Clearinghouse requirements, as are their employers. These drivers and employers are subject only to the alcohol and/or controlled substances testing requirements of Part 655. On the other hand, FTA-regulated entities that employ drivers who also perform FMCSA-regulated safety-sensitive functions must comply with the relevant alcohol and/or controlled substances testing requirements of Part 382. The following examples illustrate how employers subject to Part 655 also could be subject to Part 382.

Example #1: A driver operates a bus under the authority of the FTA during the week, but sometimes operates a charter bus, for the same employer, on the weekend. The charter operation is regulated by FMCSA, not FTA. If the driver is involved in a crash during the charter operation and is subject to post-accident testing, that testing is conducted under the authority of FMCSA (§ 382.303) and the results must be reported to the Clearinghouse. The same would be true for any testing conducted under the authority of FMCSA (e.g., random testing for drivers in an FMCSA random pool (§ 382.305)). This result is the same for any employer regulated by more than one Department of Transportation (DOT) mode; the modal authority under which the testing is conducted determines which modal regulations apply.

Example #2: A driver regularly operates a bus under the authority of the FTA, but sometimes operates a truck, for which a commercial driver’s license (CDL) is required, for the same employer. In situations like this, the dual FTA/FMCSA regulated employer must conduct a pre-employment query for any driver expected to perform any FMCSA-regulated safety-sensitive functions in the course of their employment, and conduct an annual query for all drivers who have performed any FMCSA-regulated function within the last year.