



DRUG SCREENS PLUS

Big Responsibility...Smart Choice!

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Special Report:
Falsification of Records
November 10, 2011

DOT Compliance Audits of FMCSA-regulated employers' Drug and Alcohol programs have uncovered numerous instances of falsified records, including but not limited to:

- Certificate of Entry-level Driver Training
- Certificate of Receipt for Company Policy
- Supervisor Reasonable Suspicion Training

Penalties for falsification of records have recently been increased (in accordance with the requirements of the Federal Civil Penalties Inflation Adjustment Act)...penalties of \$1,000/day and \$10,000 per violation (e.g., per falsified record) are current examples.

We have added a new "**Appendix C**" to **Section 5** of our **FMCSA Drug & Alcohol Model Program** to include excerpts from 49 CFR 386 Appx B (which details the Penalty Schedule) as well as NOTES showing an example of how quickly the penalties can accumulate.

PLEASE PLACE THE ENCLOSED 2 SHEETS IN SECTION 5 OF YOUR MODEL PROGRAM.

1. Table of Contents for Section 5 Resources & Regulations
2. Appendix C 49 CFR 386 Appx B(a)(1-3) {Place at end of Section 5}.

If you have any questions and/or need help in complying with any of the recordkeeping requirements, please contact **Jim Carlyle @ 800-459-9012 xt 787**. If our own training & resources are not sufficient to meet your needs, we can also help you connect with other available resources.

Section 5

Resources & Regulations

<u>Page</u>	<u>Contents:</u>
2	Resources (Federal)
3	Resources (DOT Fax-on-demand)
4	Resources: State/Local/ DS+ (<i>Drug Screens Plus</i>)
	49 CFR 380 – Subpart E (Entry-Level Driver Training)
	and 49 CFR 391 – Qualifications of Drivers
	See: Section 2 – Supervisor Information
Appendix A	DOT Drug & Alcohol Regulations - 49 CFR 40
Appendix B	FMCSA Drug & Alcohol Regulations - 49 CFR 382
Appendix C	49 CFR 386 Appendix B, Penalty Schedule

**Appendix C 49 CFR 386 Appx B(a)(1-3) {(a)(4-5) and (b)-(h) not included}
Penalty Schedule; Violations and Monetary Penalties**

NOTE: The Debt Collection Improvement Act of 1996 amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require agencies to adjust monetary penalties for inflation...

What are the types of violations and maximum monetary penalties?

(a) Violations of the Federal Motor Carrier Safety Regulations (FMCSRs).

- (1) Recordkeeping.** A person or entity that fails to prepare or maintain a record required by Parts 40, 382, 385, and 390-99 of this subchapter, or prepares or maintains a required record that is incomplete, inaccurate, or false, is subject to a maximum civil penalty of \$1,000 for each day the violation continues, up to \$10,000.
- (2) Knowing falsification of records.** A person or entity that knowingly falsifies, destroys, mutilates, or changes a report or record required by parts 382, 385, and 390-99 of this subchapter, knowingly makes or causes to be made a false or incomplete record about an operation or business fact or transaction, or knowingly makes, prepares, or preserves record in violation of a regulation or order of the Secretary is subject to a maximum civil penalty of \$10,000 if such action misrepresents a fact that constitutes a violation other than a reporting or recordkeeping violation.
- (3) Non-recordkeeping violations.** A person or entity that violates parts 382, 385, or 390-99 of this subchapter, except a recordkeeping requirement, is subject to a civil penalty not to exceed \$11,000 for each violation.

NOTES:

**From: Gene Boyd, C-SAPA,
Founder, Drug Screens Plus**

To: All DERs (Designated Employer Representatives)

Compliance audits indicate that Auditors are looking for (and finding) falsified documents.

As your company's DER, the above regulations probably impact you more than any other person in your company. Many of your responsibilities involve "non-recordkeeping" regulations that also require "recordkeeping". So, you (and your company) may be subject to penalties under all 3 of the paragraphs above.

For example:

Failure to provide an employee with a copy of your company's Drug/Alcohol Substance Abuse Policy {required by 382.601(a)(-c)} violates (a)(3) above {\$11,000 penalty for "each violation"};

Failure to obtain a signed receipt for the policy from an employee violates (a)(1) above {\$1,000/day up to \$10,000}; and

Causing an employee to sign such receipt without having actually received the materials violates (a)(2) above {up to \$11,000 for each violation}.

You may expect compliance auditors to pay special attention to:

- Certificate of Entry-level Driver Training*
- Certificate of Receipt for Company Policy*
- Verification of Alternative to Pre-Employment Testing*
- Supervisor Reasonable Suspicion Training*
- Notice to Employee regarding Available SAP Services*
- Random Testing verification records*
- Pre-employment testing records*

(e.g., negative test result received before putting new driver in service).

If you need assistance or have any questions, please call Jim Carlyle @ 800-459-9012 xt 787.