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FMCSA Issues Guidance on Drug and Alcohol Testing

The Federal Motor Carrier Safety Administration (FMCSA) has issued guidance to assist motor carriers who are experiencing difficulties to fully comply with drug and alcohol testing requirements because of the effects of COVID-19. This guidance is in effect until June 30, 2020.

Random Testing

If random testing rates of 50% for drugs and 10% for alcohol are unable to be met due to the COVID-19 crisis, the tests should be made up by the end of the year in order to achieve these percentages and comply with the requirements. Documentation of the reasons for the inability to conduct the random tests on selected drivers should be recorded and preserved, as well as what measures were taken by your organization to cure the inability to test, such as attempts to find alternate collection sites or other testing resources.

Pre-Employment Testing

If a negative test result has not been received for a prospective driver, this driver cannot perform DOT safety-sensitive functions until that test result has been received.

The guidance provides for an exception to the negative test receipt requirement by following 49 CFR 382.301(b) whereby the driver has previously participated in a controlled substances program that conforms with the requirements of 49 CFR Part 40 testing requirements;

- Was tested for controlled substances within the past 6 months from the date of application for employment; and
- Participated in a random controlled substances testing program for the previous 12 months from the date of application for employment.

Post-Accident Testing

In the event an accident occurs that requires testing of the driver under §382.383 (a) or §382.383 (b), and you are unable to administer the alcohol test within eight hours following the accident, or the controlled substance test within thirty-two hours following the accident because of the COVID-19 national emergency, you must document the specific reasons for the inability to comply with the testing requirements.

Reasonable Suspicion Testing

The employer needs to document the observations leading to an alcohol or controlled substance reasonable suspicion test and have the supervisor or company official that made the observations sign the documentation within 24 hours of the observed behavior. A finding of reasonable suspicion must be based upon “specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver,” as set forth in §382.307(a).

If employers are not able to conduct testing in the event of a situation involving an incident of reasonable suspicion, they should 1) document the reasons why the test could not be conducted; and 2) document what measures were taken by your organization to cure the inability to test. The guidance also provides that employers follow the regulations set forth in 49 CFR.307 (e)(1), (2) with respect to reasonable suspicion findings and:

- Document reasons for not conducting alcohol test within two hours of determination;
- Cease efforts to conduct alcohol test if not performed within eight hours of determination and document reasons for not conducting test.
- Employer shall not permit the driver to perform or continue to perform safety-sensitive functions until either Alcohol test is administered and driver’s alcohol concentration measures less the 0.02 or twenty-four hours have elapsed following the employer’s determination of reasonable suspicion of the need

for alcohol testing.

Return-to-Duty Testing

A driver cannot perform safety-sensitive functions until the Return-to-Duty test is conducted, and a negative result is returned.

Follow-up Testing

If follow-up testing cannot be completed for an employee, the employer must document the specific reasons for the inability to conduct the testing in accordance with the follow-up testing plan, and include what measures were taken by your organization to cure the inability to conduct the test, such as attempts to find alternate collection sites or other testing resources. The employer should continue efforts to have the follow-up testing conducted so that it occurs as soon as practicable.

For employers, it is critical that all events be documented and preserved in order to provide proof that you exercised best efforts to comply with the requirements if drug and alcohol testing was not able to be performed.

[View the full text of FMCSA's guidance.](#)

For more information, please contact [Michael Case](#), [Eric Baker](#), or any attorney in Frost Brown Todd's [Mobility & Transportation](#) practice group.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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