



FMCSA Issues Waiver on Pre-Employment Drug and Alcohol Testing

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In an effort to aid motor carriers recovering from the economic impact of the COVID-19 public health emergency, the Federal Motor Carrier Safety Administration (FMCSA) has issued a [three-month waiver](#) regarding certain pre-employment testing requirements for drivers subject to 49 CFR part 382. Many motor carriers have had to implement layoffs, furloughs and other removal measures affecting employees in safety-sensitive functions. This has resulted in the drivers' nonparticipation in drug and alcohol program testing for periods greater than 30 days, thus making pre-employment testing necessary upon rehire in order to comply with 49 CFR 382.301. To alleviate the cost and administrative burdens associated with this requirement and to promote economic recovery of the motor carriers, the FMCSA has instituted this waiver to provide temporary regulatory relief to allow for an expedited return of drivers to the industry.

The waiver extends the period for the pre-employment testing exception period under 49 CFR 382.301(b) from 30 days to 90 days, thus easing the burden on motor carriers in the hiring and/or rehiring process. This waiver remains in effect until September 30, 2020.

The extension of the period for the pre-employment testing exception does not alleviate the motor carrier from other obligations prior to hiring or rehiring the driver. The motor carrier must still:

- Verify that the driver participated in the controlled substances testing specified in § 382.301(b)(2)(i) and (ii)
 - Tested for controlled substances within the past six months; OR
 - Participated in the random controlled substances testing program for the previous 12 months).

- Verify that the driver had no recorded violations of any Department of Transportation's (DOT) controlled substances use regulations within the previous six months; and
- Conduct a pre-employment query of the FMCSA Drug and Alcohol Clearinghouse of each driver to comply with § 382.701(a); and
- Complete a background investigation on the driver's controlled substances and alcohol testing with all DOT regulated employers that employed the driver within the past three years.

In addition to these pre-hire requirements, employers must also notify the FMCSA within five business days of an accident involving any driver operating under the terms of this waiver. This must be done by emailing MCPSD@DOT.GOV. The email should also include the date of the accident, location where the accident occurred, name and license number of driver, the vehicle number and state license number, the number of individuals physically injured in accident, number of fatalities, the police-reported cause of the accident (if available), and whether the driver was cited for any violations of traffic laws or safety regulations.

For more information, please contact [Michael Case](#), [Eric Baker](#), [Stacey Katz](#), [Jeff Hunt](#), or any attorney in Frost Brown Todd's [Mobility & Transportation](#) industry team.

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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