

DOT & FMCSA Guidelines for Motor Carrier Employer Drug & Alcohol Testing Compliance During the COVID-19 National Emergency

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Recognizing that disruptions caused by the COVID-19 national emergency are interfering with, and in some cases preventing, motor carrier employer and driver compliance with current drug and alcohol testing requirements, the United States Department of Transportation (DOT) and the Federal Motor Carrier Safety Administration (FMCSA) have issued guidelines and recommendations with respect to DOT drug and alcohol testing requirements for employers of commercial motor vehicle drivers during this period of national emergency.

The DOT has issued the following guidance on compliance with drug and alcohol testing programs, which apply during this period of national emergency:

- DOT-regulated employers must comply with the applicable DOT testing requirements; however, DOT recognizes that compliance may not be possible in certain areas due to the unavailability of program resources, such as collection sites. DOT-regulated employers should make a reasonable effort to locate the necessary resources and as a best practice at this time, the DOT recommends that employers consider mobile collection services for required testing if fixed-site collection facilities are not available.
- If a DOT-regulated employer is unable to conduct DOT drug or alcohol testing due to COVID-19 related supply shortages, facility closures, State or locally imposed quarantine requirements, or other impediments, employers are to continue to comply with existing applicable DOT Agency requirements to document why a test was not completed. If testing can be conducted later, employers are to do so in accordance with applicable regulations.
- If DOT-regulated employers are unable to conduct DOT drug and alcohol testing due to the unavailability of testing resources, the underlying regulations continue to apply. For example, without a "negative" pre-employment drug test result, an employer may not permit a prospective or current employee to perform any DOT safety-sensitive functions.
- It is the employer's responsibility to evaluate the circumstances of an employee's refusal to submit to a test and determine whether or not the employee's actions should be considered a "refusal" under 49 CFR § 40.355(i). However, the DOT is asking DOT-regulated employers to be sensitive to employees who indicate they are not comfortable or are afraid to go to clinics or collection sites due to the novel public health risk that COVID-19 poses. The DOT is asking that employers verify with the clinic or collection site that it has taken the necessary precautions to minimize the risk of exposure to COVID-19.

In addition to the DOT guidelines, the FMCSA has issued the following guidelines, which are currently in effect until June 30, 2020, specific to the FMCSA's drug and alcohol testing requirements for motor carrier employers pursuant to the flexibility provided under 49 CFR part 382 to address the COVID-19 national emergency:

- **Random Testing:** If, due to disruptions caused by the COVID-19 national emergency, a motor carrier employer is unable to perform random selections and tests sufficient to meet the random testing rate for a given testing period to achieve the required 50% rate for drug testing and 10% for alcohol testing, a motor carrier employer should make up the tests by the end of the year. The motor carrier employer should document in writing the specific reasons why they were unable to conduct tests on drivers randomly selected, as well as any actions taken to locate an alternative collection site or other testing resources.
- **Pre-Employment Testing:** If a motor carrier employer is unable to conduct a pre-employment controlled substance test, they cannot allow a prospective employee to perform DOT safety-sensitive functions until a negative pre-employment test result is received, unless the exception in 49 CFR 382.301(b) applies.
- **Post-Accident Testing:** If, due to disruptions caused by the COVID-19 national emergency, a motor carrier employer is unable to administer an alcohol test within 8 hours following an accident or a controlled substance test within 32 hours following an accident, a motor carrier employer must document in writing the specific reasons why the test could not be conducted.
- **Reasonable Suspicion Testing:** A motor carrier employer should document in writing the specific reason why a reasonable suspicion test could not be conducted as required, including any efforts made to mitigate the effect of the disruption caused by the COVID-19 national emergency, such as trying locate an alternative collection site. This documentation should be provided in addition to the documentation of the observations leading to a reasonable suspicion test.
- **Return-to-Duty (RTD) Testing:** A motor carrier employer must not allow a driver to perform any safety-sensitive functions until the RTD test is conducted and there is a negative result.
- **Follow-Up Testing:** If follow-up testing cannot be completed due to disruptions caused by the COVID-19 national emergency, a motor carrier employer should document in writing the specific reasons why the testing could not be conducted in accordance with the follow-up testing plan, including any efforts made to mitigate the effect of the disruption, such as trying to locate an alternative collection site; however, the follow-up test should be conducted as soon as possible.

Click [HERE](#) for the full "DOT Guidance on Compliance with Drug and Alcohol Testing Regulations"

Click [HERE](#) for the full "FMSCA COVID-19 Drug & Alcohol Testing Guidance"

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