

# COMPLIANCE BULLETIN

## Coronavirus Disruptions to CMV Driver Drug and Alcohol Testing

The Federal Motor Carrier Safety Administration (FMCSA) regulations provide reasonable flexibility to motor carrier employers and their drivers subject to testing. However, the FMCSA is aware that disruptions caused by the COVID-19 national emergency are interfering with, and in some cases, may be preventing, employer and driver compliance with current drug and alcohol testing requirements.

As a result, the FMCSA has issued the following guidance in response to the state of emergency declared by the federal government and the need for the transportation industry to support critical infrastructure as it responds to the pandemic. The new guidance will be in effect until **May 30, 2020**.

This guidance addresses testing in the following scenarios:

- Random testing
- Pre-employment testing
- Post-accident testing
- Reasonable suspicion testing
- Return-to-duty testing
- Follow-up testing

### Action Steps

CMV carriers and employers should:

- Become familiar with this guidance and note whether this guidance departs from traditional drug and alcohol testing regulations; and
- Train CMV drivers on how these guidelines apply during COVID-19 efforts.

Employers and carriers are encouraged to review the information published by the [Office of Drug and Alcohol Policy Compliance \(ODAPC\)](#) for more information.

Provided to you by **Wallace Welch & Willingham**

### Highlights

#### Random Testing

Random testing is still required, but carriers will be able to make up tests by the end of the year. Documentation on testing disruptions is advised.

#### Pre-employment Testing

Unless an exemption applies, pre-employment testing is still required.

#### Post-accident Testing

Post-accident testing requirements still apply, and need to be performed as soon as practicable. However, carriers must document the reason for any failure to comply with the 8- and 32-hour post-accident testing requirements.

### Important Dates

#### May 30, 2020

Expiration date for FMCSA special guidance for drug and alcohol testing disruptions caused by COVID-19.



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## Recommended actions for FMCSA-regulated employers unable to conduct:

**Random Testing** You are required by 49 CFR 382.305(k) to ensure that the dates for administering random alcohol and controlled substances tests are spread reasonably throughout the calendar year. DOT guidance further recommends that you perform random selections and tests at least quarterly. [Click here for more guidance.](#)

If, due to disruptions caused by the COVID-19 national emergency, you are unable to perform random selections and tests sufficient to meet the random testing rate for a given testing period in order to achieve the required 50% rate for drug testing and 10% for alcohol testing, you should make up the tests by the end of the year. You should document in writing the specific reasons why you were unable to conduct tests on drivers randomly selected and any actions taken to locate an alternative collection site or other testing resources.

**Pre-Employment Testing** If you are unable to conduct a pre-employment controlled substances test in accordance with 49 CFR 382.301(a), you cannot allow a prospective employee to perform DOT safety sensitive functions until you receive a negative pre-employment test result, unless the exception in 49 CFR 382.301(b) applies.

**Post-Accident Testing** You are required to test each driver for alcohol and controlled substances as soon as practicable following an accident, as required by 49 CFR 382.303. However, if you are unable to administer an alcohol test within eight hours following the accident or a controlled substance test within 32 hours following the accident due to disruptions caused by the COVID-19 national emergency, you must document in writing the specific reasons why the test could not be conducted, as currently required. See 49 CFR 382.303(d) and [FMCSA Guidance](#).

**Reasonable suspicion testing** You should document in writing the specific reasons why the test could not be conducted as required; include any efforts you made to mitigate the effect of the disruption, such as trying to locate an alternative collection site. This documentation should be provided in addition to the documentation of the observations leading to a test, as required by 49 CFR 382.307(f). Follow current regulations addressing situations in which reasonable suspicion testing is not conducted, set forth in 49 CFR 382.307(e)(1), (2).

**Return-to-duty (RTD) testing** In accordance with 49 CFR 40.305(a), you must not allow the driver to perform any safety-sensitive functions, as defined in 49 CFR 382.107, until the RTD test is conducted and there is a negative result.

**Follow-up testing** If testing cannot be completed, you should document in writing the specific reasons why the testing could not be conducted in accordance with the follow-up testing plan; include any efforts you made to mitigate the effect of the disruption, such as trying to locate an alternative collection site. You should conduct the test as soon as practicable.

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## **FMCSA-Regulated Employees:**

Please follow the ODAPC guidance, as set forth below and available [here](#):

- If you are experiencing COVID-19-related symptoms, you should contact your medical provider and, if necessary, let your employer know about your availability to perform work.
- If you have COVID-19-related concerns about testing, you should discuss them with your employer. FMCSA joins ODAPC in suggesting that employers respond to employee concerns in a sensitive and respectful way.
- As a reminder, it is the employer's responsibility to evaluate the circumstances of what may be considered an employee's refusal to test and determine whether or not the employee's actions should be considered a refusal under 49 CFR § 40.355(i).

*Source: U.S. Department of Transportation, [Federal Motor Carrier Safety Administration](#)*