

## Keeping Pace with Truck Driver Drug and Alcohol Testing During COVID-19

The U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) announced on March 13, 2020, that, due to the COVID-19 outbreak, exemptions for some regulations were warranted for certain motor carriers and their drivers. This announcement turned a sensitive eye toward the new challenges facing the industry while effectively sustaining the FMCSA's continued focus on drug and alcohol testing.

Carriers are required to ensure that their drivers stay in compliance with the FMCSA regulations. These requirements run the gamut from providing regulations for licensing, through to vehicle maintenance, and drug testing. Drug and alcohol screening has been a DOT requirement since 1991.<sup>1</sup> Drivers with a commercial driver's license (CDL) must pass mandatory drug screening before employment by a carrier and, in some instances, must be screened following an accident.<sup>2</sup> These rules include procedures for testing, frequency of tests, and substances tested.<sup>3</sup> The uncertainties around the pandemic presented unique challenges to the trucking industry during a period of increasingly high supply-chain demand. Now is an opportune time for carriers to review the current regulations and clarify what the changes are and the associated timelines.

### Considerations for the Trucking Industry

During the pandemic, the FMCSA has provided guidance for mandatory drug testing in light of the challenges encountered in finding adequate resources to perform the tests.<sup>4</sup> These guidelines addressed several points for carriers if their drivers are unable to meet the requirements of drug testing because the necessary service providers are closed or not available. If such pandemic-related closures hinder the ability for this vital industry to move goods safely, the impact on the economy would be devastating since, by weight, trucking moves roughly 71.4 percent of the nation's freight.<sup>5</sup>

The FMCSA's regulatory adjustments were intended to help carriers continue to meet the demands of the supply chain while adjusting to the demands for public health.<sup>6</sup> The most notable adjustment has been to allow carriers to postpone random drug testing as long as the required number of tests is completed by the end of the year. Carriers must document in writing the reasons for being unable to complete the testing. Testing for driver's post-accident may also be postponed as long as the efforts to obtain testing are documented. However, the DOT did not waive the obligation to conduct pre-employment drug testing before drivers can begin driving.

The position taken by the DOT on this guidance is consistent with the attitude the DOT has regarding drug and alcohol testing overall. For example, in 2019 the FMCSA doubled the minimum annual percentage rate for random drug tests from 25 percent to 50 percent as a response to the increase in positive drug tests.

In January 2020, the FMCSA rolled out the Drug & Alcohol Clearinghouse, which is an online database that provides users with access to driving records from CDL drivers.<sup>7</sup> It attempts to prevent drivers from concealing any drug or alcohol violations simply by moving to another job or jurisdiction. The clearinghouse records includes an accounting of driver drug and alcohol violations, as well as whether a driver has completed the return-to-duty process and follow-up testing after a positive test or test refusal. These records track the drug and alcohol program violations.

### Conclusion



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### Related Practice Areas

- Transportation & Trade

The regulatory guidelines provided by the FMCSA due to the COVID-19 outbreak are well-intended and offer the trucking industry a set of workable criteria to help ensure the safety and productivity of our most vital human resources and the products they deliver during these new and challenging times. Those served by them — all 300 million people here in the United States — are relying on them. Given that the FMCSA's drug and alcohol testing COVID-19 guidance sunsets on July 1, drivers and/or employers considering how best to ensure ongoing adherence must work to communicate and clarify what the changes are and how to best respond. Anyone considering how to implement and follow these mandates needs to carefully ensure awareness and compliance with the regulations.

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<sup>1</sup> 49 CFR Part 382 and 49 CFR Part 40/

<sup>2</sup> All drivers that operate a commercial motor vehicle, as defined in 49 CFR 382.107, requires a driver holding a commercial driver's license, are subject to the Drug and Alcohol Testing requirements in 49 CFR Parts 40 and 382

<sup>3</sup> [https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Best\\_Practices\\_for\\_DOT\\_Random\\_Drug\\_and\\_Alcohol\\_Testing\\_508CLN.pdf](https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Best_Practices_for_DOT_Random_Drug_and_Alcohol_Testing_508CLN.pdf)

<sup>4</sup> <https://www.fmcsa.dot.gov/emergency/fmcsa-covid-19-drug-alcohol-testing-guidance>

<sup>5</sup> According to the American Trucking Association

<sup>6</sup> <https://www.fmcsa.dot.gov/emergency/fmcsa-covid-19-drug-alcohol-testing-guidance>

<sup>7</sup> <https://clearinghouse.fmcsa.dot.gov/>