



April 3, 2020

Dear Members,

The following are guidelines on new DOT regulations as regards operations during the current COVID-19 crisis.

UPDATE: Late on March 25th, the FMCSA issued additional guidance related to compliance with Part 382. The guidance is currently in effect until May 30, 2020. The following article has been updated to incorporate that guidance. While not offering a free pass, the U.S. DOT has issued new guidance to help motor carriers deal with mandatory drug and alcohol testing during the coronavirus (COVID-19) outbreak.

The agency says it wants to provide "maximum flexibility" while maintaining public safety during the national emergency. To that end, employers are asked to carry on with drug and alcohol training and testing whenever possible.

Key resources may not be available

The DOT acknowledges that compliance may not be possible in certain areas, however, due to the unavailability of such resources as collection sites, breath alcohol technicians (BATs), medical review officers (MROs), and substance abuse professionals (SAPs).

The agency recommends the following:

- Make a "reasonable effort" to locate needed resources. As a best practice, consider mobile collection services for required testing if fixed-site collection facilities are not available. Keep in mind, however, that all tests must still comply with Part 40 protocols.
- If you are unable to conduct DOT drug or alcohol tests due to pandemic-related supply shortages, facility closures, government-imposed quarantines, or other impediments, continue to comply with FMCSA requirements to document why a test was not completed. If training or testing can be conducted later (e.g., supervisor reasonable suspicion training at the next available opportunity, random testing later in the selection period, follow-up testing later in the month), do so in accordance with FMCSA regulations in Part 382.
- If you cannot conduct DOT drug and/or alcohol testing due to the unavailability of testing resources, the FMCSA regulations continue to apply. For example, without a negative pre-employment drug test result, you cannot allow a prospective or current employee to perform any DOT safety-sensitive functions.

Additional guidance from the FMCSA

The FMCSA has issued the following guidance for motor carriers specific to certain types of tests, should the national emergency prevent testing:

- **Random Tests:** Random testing must be administered evenly throughout the calendar year, and carriers are advised to make random selections at least quarterly. If you experience disruptions as a result of COVID-19 and are unable to complete your random tests, you should document in writing the specific reason(s) why you were unable to conduct tests on

drivers who were randomly selected, and any actions you took to locate an alternative collection site or other testing resources. Then, you should make up the tests by the end of the year, to meet the minimum annual testing requirements.

- **Post-Accident Tests:** You are expected to make all attempts to test drivers in accordance with §382.303. If coronavirus-related disruptions prevent you from carrying out the alcohol test within eight hours following the accident or drug testing within 32 hours, you must document the specific reasons (see §382.303(d)).
- **Reasonable-Suspicion Tests:** If you are unable to carry out a reasonable-suspicion test due to the national emergency, you must document in writing the specific reasons why the test could not be conducted as required. Your explanation should include any efforts you made to mitigate the disruption, such as trying to locate an alternative collection site. In the event of an investigation, the documented circumstances would be provided to enforcement, along with the trained supervisor's observations leading to the request of the test. The need for an explanation why a reasonable suspicion test was not performed is nothing new; it appears in §382.307(e)(1) and (2).
- **Return-to-Duty Tests:** The FMCSA has not offered any exemption to the return-to-duty test requirements. Drivers who are subject to an evaluation, treatment, and negative return-to-duty test following a DOT violation under Part 382 must complete the required steps (including the RTD test) prior to performing a safety-sensitive function again.
- **Follow-Up Tests:** Motor carriers should make all attempts to follow through with a driver's testing plan, including efforts to locate alternate facilities. If follow-up testing cannot be completed, you must document the specific reasons for the missed test; document your efforts to mitigate the disruption; and conduct the test as soon as practicable.

Note that drivers operating under the FMCSA's current emergency declaration, who may be exempt from hours of service and other safety regulations while engaged in emergency response (e.g., transporting fuel, food, or medical supplies), are not exempt from drug and alcohol testing.

Drivers may have health concerns

Many employees are concerned about contracting COVID-19 while at a clinic for DOT testing. Employers should be sensitive to employees who indicate they are not comfortable or are afraid to go to clinics or collection sites. If testing at a later date is not an option, the DOT suggests that employers contact the facility to verify that it has taken the necessary precautions to minimize the risk of exposure to COVID-19.

Once an employee is notified of DOT-required testing and fails to go to the collection site, it is the employer's responsibility to evaluate the circumstances of the employee's refusal and determine whether or not the employee's actions should be considered a refusal.

Remind your drivers about the actions that are considered a refusal to test (see sections 40.191 and 40.261 for a complete list). A refusal to test, excluding pre-employment testing, includes:

- Failing to go to the clinic when instructed;
- Showing up late to the clinic after instructed to proceed immediately;
- Leaving the clinic without providing an adequate sample for testing;
- Failing to cooperate with any part of the testing process; and
- Failing to allow a direct observation when applicable.

Backup plans

The DOT also suggests that employers have an up-to-date backup plan for testing in the event resources become unavailable, including:

- A list of available drug collection and alcohol testing sites,
- Alternate and back-up MROs, and
- Regular communications with service agents regarding their current availability and capability.

The guidance comes from the agency's Office of Drug and Alcohol Policy & Compliance (ODAPC), which is responsible for administering the testing regulations in 49 CFR Part 40 for all transportation modes.

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