



LEGAL UPDATE

FMCSA Notice: Flexible Drug and Alcohol Testing Rates During COVID-19 Pandemic

On July 6, 2020, the Federal Motor Carrier Safety Administration (FMCSA) issued a [notice](#) to assure motor carriers that they will be able to test drivers at a lower rate if they can prove that a deviation from current random testing rates was necessary because of the COVID-19 pandemic.

The notice is significant because the FMCSA doubled the [testing rate for controlled substances in 2020](#) to 50 percent. The FMCSA is issuing this notice because the agency is aware that the pandemic has created, and may continue to create, major disruptions in the motor carrier industry.

Flexible Enforcement

While COVID-19 disruptions persist, employers may select drivers at a rate of less than 50 percent of their average number of driver positions for controlled substances, and 10 percent for random alcohol testing during the 2020 calendar year. In addition, enforcement flexibility will also be given to the requirement of spreading random testing throughout 2020.

However, the FMCSA notice also warns that employers must comply with current random testing rate requirements if they are able to do so.

Conditions

To qualify for this flexible approach to testing rate requirements, carriers will need to document:

- The specific reasons for noncompliance; and
- Any actions the employer took to identify alternative testing sites or resources.

Employers that fail to document their inability to comply with testing rate obligations due to the COVID-19 pandemic may be subject to the full enforcement of this requirement.

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Random Testing Rates

Testing Rates

The FMCSA requires employers to test a percentage of their driver positions each year at random.

The number of tests an employer conducts depends on the testing rate and the average number of driver positions for the employer.

2020 Rates

- Drug Testing: 50 percent
- Alcohol Testing: 10 percent

Carriers will be able to test drivers at a lower rate if they can prove that a deviation from current random testing rates was necessary.



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