



U.S. Department
of Transportation

**Federal Motor Carrier
Safety Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

July 6, 2020

**NOTICE OF ENFORCEMENT DISCRETION DETERMINATION:
RANDOM CONTROLLED SUBSTANCE AND ALCOHOL TESTING**

On March 13, 2020, the President declared a national emergency under 42 U.S.C. § 5191(b), related to the effects of Coronavirus Disease 2019 (COVID-19). The Federal Motor Carrier Safety Administration (FMCSA) is aware that the motor carrier industry continues to experience operational disruptions caused by the COVID-19 public health emergency. As the Nation engages in a phased re-opening, the pace of return to normal operations will vary across the country. In some regions of the United States, motor carrier employers subject to controlled substance (drug) and alcohol testing under 49 CFR part 382 may be unable to comply with certain testing requirements due to the ongoing impacts of the emergency.

In recognition of these barriers to full compliance in some locations, the Agency may exercise discretion to determine not to enforce the minimum annual percentage random testing rates for drugs and alcohol, and the requirement that each employer ensure that the dates for administering random drug and alcohol tests are spread reasonably throughout the calendar year, as set forth in 49 CFR 382.305(b)(1) and (2) and 49 CFR 382.305(k), respectively. *FMCSA emphasizes, however, that employers capable of meeting these requirements must continue to do so.*

Employers must continue to select drivers at the required rate of 50 percent of their average number of driver positions for controlled substances, and 10 percent for random alcohol testing during the calendar year 2020. If a test is unable to be completed due to the COVID-19 public health emergency, the motor carrier must maintain written documentation of the specific reasons for non-compliance. For example, employers should document closures or restricted use of testing facilities or the unavailability of testing personnel. Additionally, employers should document actions taken to identify alternative testing sites or other testing resources.

Similarly, employers who are unable to ensure that the dates for administering random controlled substances and alcohol tests are spread reasonably throughout the calendar year should document the specific reasons why they did not meet this requirement. For example, in addition to the lack of available testing facilities or personnel, there may be other factors, such as prolonged or intermittent driver furloughs due to the impacts of COVID-19.

The Agency issues this Notice to assure employers unable to fully comply with the requirements identified above that we will provide reasonable enforcement flexibility during this unprecedented pandemic, while also meeting FMCSA's core safety mission. This Notice is not intended, and should not be perceived, as suspending the current random testing requirements.

This Notice pertains to employers' noncompliance, during calendar year 2020, with the random testing requirements described above. The Agency may exercise enforcement discretion in connection with motor carrier investigations occurring in calendar year 2021.

This Notice:

1. Acknowledges the current and anticipated disruptions to the administration of drug and alcohol testing caused by the COVID-19 public health emergency;
2. Considers the interests of public safety and the continuing need to free up medical supplies and facilities for the diagnosis and treatment of COVID-19;
3. Requires that employers who are capable of complying with 49 CFR 382.305(b) and 49 CFR 382.305(k) must continue to do so; and
4. Creates no individual rights of action and establishes no precedent for future determinations.

Jim Mullen
Deputy Administrator
Federal Motor Carrier Safety Administration