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PMAA REGULATORY ALERT

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US DOT COVID-19 GUIDANCE FOR DRUG AND ALCOHOL TESTING REQUIREMENTS

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The U.S. DOT has issued guidance for employers who may have difficulty conducting mandated federal drug and alcohol testing due to the recent COVID-19 outbreak. Barriers to testing include unavailability of collection sites, breath alcohol technicians (BAT), medical review officers (MRO) and substance abuse professionals (SAP) caused by the COVID-19 outbreak. The guidance provides employers with testing flexibility by recognizing COVID-19 as a possible barrier to testing. In some cases, missed tests must take place at a later date according to the guidance.

WARNING! This is not a blanket waiver of U.S. DOT drug and alcohol testing requirements. Employers must follow existing regulations requiring a detailed written explanation on why testing could not be conducted or delayed until a later date and the reasonable efforts taken to find alternative testing venues. Moreover, in no case can an employee, including drivers, conduct safety sensitive functions without first obtaining a negative pre-employment test for drugs and a negative return-to-duty test for drug and alcohol.

The following guidance explains the steps employers must take when they are unable to test, must delay testing or a driver does not want to test due to elevated public health risks. The DOT requires employers having difficulty conducting drug and alcohol testing due to COVID-19 to take the following steps:

Drug and Alcohol Testing Difficulties Due to COVID-19 Closures Inability to Conduct Tests

- If employers are unable to conduct DOT drug or alcohol testing and training (supervisor reasonable suspicion training) due to COVID-19-related supply shortages, facility closures, State or local quarantine requirements, or other impediments, then they must continue to comply with existing DOT regulatory

requirements to **document why a test or training was not completed or was delayed**. The documentation must show that reasonable efforts were taken to find alternative testing facilities. The DOT is strongly recommending employers seek out mobile drug and alcohol testing and training services as a viable option.

Delayed Tests

- If employers are able to conduct testing or training (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) at a later date, it must be conducted according to existing DOT regulatory requirements.

Driver Refusal Based on Public Health Risks

- Some drivers have expressed concern about potential public health risks associated with the collection and testing process in the current environment. Employers should review applicable DOT regulations for testing to **determine whether flexibilities allow for collection and testing at a later date**. The employer is responsible for evaluating the circumstances of the employee's refusal to test and determine whether the employee's actions should be reported as such. However, given the public health risks posed by COVID-19, the DOT asks employers to be sensitive to employees who indicate they are not comfortable or are afraid to go to clinics or collection sites. DOT also asks employers to verify with the clinic or collection site that it has taken the necessary precautions to minimize the risk of exposure to COVID-19.

Employer Responsibilities for Lack of Testing and Delayed Testing

- **Random Testing** – If, due to disruptions caused by the COVID-19 national emergency, employers are unable to perform random selections and tests to meet the random testing rate for a given testing period to achieve the required 50% rate for drug testing, and 10% for alcohol testing, **the tests must be made up by the end of the year**. Employers must document in writing according to existing DOT regulatory requirements why tests on drivers randomly selected could not be conducted, and any actions taken to locate an alternative collection site or other testing resources.
- **Pre-Employment Testing** – Employers unable to conduct pre-employment drug tests, **cannot allow a prospective employee to perform DOT safety sensitive functions** (drive, load, unload, produce shipping papers, etc.) until a negative pre-employment test result is received.

- **Post-Accident Testing** – Employers unable to administer an alcohol test within 8 hours following an accident, or a controlled substance test within 32 hours following the accident, due to disruptions caused by the COVID-19 national emergency, must state in writing the specific reasons why the tests could not be conducted. The writing must be in accordance with existing DOT regulatory requirements.
- **Reasonable Suspicion testing** – Employers must document in writing the specific reasons why a reasonable suspicion test could not be conducted as required. The written explanation **must document efforts** made to mitigate the effect of the disruption in testing, 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, according to DOT requirements. Employers must follow current regulations addressing situations in which reasonable suspicion testing is not conducted, as set forth in [49 CFR 382.307\(e\)\(1\),\(2\)](#).
- **Return-to-duty (RTD) testing** – Employers **must not** allow drivers to perform any safety-sensitive functions, until an RTD test is conducted and there is a negative result.
- **Follow-up testing** - If follow-up testing cannot be completed, employers must document in writing the specific reasons why the testing could not be conducted. Employers must include any efforts you made to mitigate the effect of the disruption in testing, such as trying to locate an alternative collection site. Employers must conduct the test as soon as practicable.

DOT Drug and Alcohol Testing Guidance

- There are two drug and alcohol COVID-19 guidance documents. The first was issued by the FMCSA and targets interstate and intrastate motor carriers. The second guidance was issued by the U.S. DOT and target all transportation modes subject to DOT drug and alcohol testing. While the FMCSA and U.S. DOT guidance are largely identical in terms of policy, the DOT guidance contains more in-depth explanations.

[FMCSA Drug and Alcohol Testing Guidance - COVID-19](#)

[U.S. DOT Drug and Alcohol Testing Guidance - \(COVID-19\)](#)

Got Questions? Contact Mark S. Morgan, PMAA Regulatory Counsel at mmorgan@pmaa.org or at (202) 364-6767