

**DRUG AND ALCOHOL TESTING**  
**49 CFR 199.105**

Question 1:

*Do PHMSA's regulations require random testing on a monthly, quarterly, or semi-annual basis?*

Answer:

According to 49 C.F.R. § 199.105(c)(7), random drug testing need only be “spread reasonably throughout the calendar year.” As such, PHMSA regulations do not mandate a particular periodical testing scheme. However, the phrase “spread reasonably through the calendar year” implies that a minimum number of random drug tests should be scheduled such that covered employees cannot predict when or if another test will occur.

Question 2:

*If an operator or contractor is non-compliant with § 199.105(c) by 1) not conducting reasonably spaced random drug tests through the calendar year or 2) not meeting the minimum random testing rate for the year, do PHMSA regulations require covered employees in the operator's/contractor's random pool to undergo a new pre-employment drug test under § 199.105(a)?*

Answer:

No. Pre-employment testing requirements are codified in 49 C.F.R. § 199.105(a), which states that “[n]o operator may hire or contract for the use of any person as an employee unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirements of this part.” Covered employees who have already taken and passed a pre-employment drug test do not have to undergo a second pre-employment drug test if the operator or contractor failed to conduct random testing in accordance with the provisions of § 199.105(c).

However, it is important to note that 49 C.F.R. § 199.105(a) also allows an operator to bypass the pre-employment drug test requirement and hire or contract for employment a person who is already covered by an anti-drug plan that comports with Part 199. If this route is taken, and an operator or contractor fails to run or participate in an anti-drug plan that meets Part 199 requirements, such as random testing, then a pre-employment drug test may be required for each employee.

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Question 3:

*Is an operator required to conduct random drug testing on its covered employees at a rate greater than the minimum annual percentage rate established by the PHMSA Administrator pursuant to § 199.105(c)?*

Answer:

An operator or contractor is not required under § 199.105(c) to subject covered employees to a random drug testing rate above the minimum annual percentage rate established by the Administrator pursuant to his or her authority in 49 C.F.R. § 199.105(c), but an operator or contractor may voluntarily institute a higher random drug-testing rate if it chooses.

Question 4:

*If an employee is in the random pool, but has not actually been selected and randomly tested in a calendar year, must he/she be subject to another pre-employment test?*

Answer:

No. Covered employees would not be subject to a second pre-employment drug test under § 199.105(a) should such covered employee not be selected for random testing during a calendar year. Pre-employment testing requirements are codified in 49 C.F.R. § 199.105(a), which states that “[n]o operator may hire or contract for the use of any person as an employee unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirements of this part.”