**Section § 382.303: Post-accident testing.**

## Guidance Q&A

**Question 1: Why does the Federal Motor Carrier Safety Administration (FMCSA) allow post-accident tests done by Federal, State or local law enforcement agencies to substitute for a §382.303 test even though the FMCSA does not allow a Federal, State or local law enforcement agency test to substitute for a pre-employment, random, reasonable suspicion, return-to-duty, or follow-up test? Will such substitutions be allowed in the future?**

**Guidance:** A highway accident is generally investigated by a Federal, State, or local law enforcement agency that may determine that probable cause exists to conduct alcohol or controlled substances testing of a surviving driver. The Federal Motor Carrier Safety Administration (FMCSA) believes that testing done by such agencies will be done to document an investigation for a charge of driving under the influence of a substance and should be allowed to substitute for a FMCSA-required test. The FMCSA expects this provision to be used rarely.

The FMCSA is required by statute to provide certain protection for drivers who are tested for alcohol and controlled substances. The FMCSA believes that law enforcement agencies investigating accidents will provide similar protection based on the local court’s prior action in such types of testing.

The FMCSA will not allow a similar approach for law enforcement agencies to conduct testing for the other types of testing. A law enforcement agency, however, may act as a consortium to provide any testing in accordance with parts 40 and 382.