Guidance on how a Canadian motor carrier can comply with the testing regulations when adding cross border work to an intra-Canadian driver’s duties

**Section § 382.305: Random testing.**

## Guidance Q&A

**Question 16: Canadians believe that their laws require employer actions be tied to the nature of the job and the associated safety risk. Canadian employers believe they will have to issue alcohol and drug testing policies that deal with all drivers in an identical manner, not just drivers that cross the border into the United States. If a motor carrier wanted to add cross border work to an intra-Canadian driver’s duties, and the driver was otherwise qualified under the FMCSA rules, may the pre-employment test be waived?**

**Guidance:** The Federal Highway Administration (FHWA) has long required, since the beginning of the drug testing program in 1988, that transferring from intrastate work into interstate work requires a "pre-employment" test regardless of what type of testing a State might have required under intrastate laws. This policy also applied to motor carriers that had a pre-employment testing program similar to the FHWA requirement. The Federal Motor Carrier Safety Administration (FMCSA) believes it is reasonable to apply this same interpretation to the first time a Canadian or Mexican driver enters the United States.

This policy was delineated in the Federal Register of February 15, 1994 (59 FR 7302, at 7322). The FMCSA believes motor carriers should separate drivers into intra-Canadian and inter-State groups for their policies and the random selection pools. If a driver in the intra-Canadian group (including the random selection pool) were to take on driving duties into the United States, the driver would be subject to a pre-employment test to take on this driving task. Although the circumstance is not actually a first employment with the motor carrier, such a test would be required because it would be the first time the driver would be subject to part 382.