Federal Drug & Alcohol Testing Program Training

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Agenda

- History of the federally-mandated testing program
- Federal regulations
- Parties involved in drug and alcohol testing
- Elements of a compliant testing program
- Testing circumstances
- Testing procedures
- Return-to-duty process
- Resources
- Q&A
History of the regulations

- Conrail & Amtrak collision, January 1987
- New York City Subway derailment, August 1991
- Passing of the Omnibus Transportation Employee Testing Act
  - Directive to USDOT to develop rules regarding "how" testing will be performed
  - Directive to transportation administrations to develop industry specific testing rules

USDOT Umbrella

- USDOT
- USCG
- FRA
- FTA
- FAA
- FMCSA
- PHMSA
USDOT Regulations

- USDOT 49 CFR Part 40
  - The procedural rule
    - Which specimens are permitted to be used for federal testing
    - How the specimens are collected and analyzed, the Medical Review Process for drug testing, how results are reported and the employee protections

FMCSA Regulations

- FMCSA 49 CFR Part 382
  - The rule is applicable to all commercial motor vehicle operators
    - A commercial driver’s license is required if the vehicle is:
      - 26,001 lbs. or greater
      - 16 passengers including driver
      - Transporting hazardous materials
  - Employers are responsible for implementing a compliant testing program and are subject to FMCSA auditing
Parties involved in drug and alcohol testing:

- Designated Employer Representative (DER)
- Urine Specimen Collector
- DHHS Certified Laboratory
- Medical Review Officer
- Breath Alcohol Technician
- Substance Abuse Professional
- Third Party Administrator

Elements of a Compliant Program

1. Substance Abuse Policy
   - Drug awareness information
2. Supervisor training
3. Testing circumstances per FMCSA
   - Pre-employment, Random, Post-Accident, Reasonable Suspicion
4. Testing Procedures per USDOT
   - Specimen collection, analysis and MRO process
5. Substance Abuse Professional Resource
   - Must be provided to all employees and applicants that test positive or refuse to submit to testing
   - Return-to-Duty & Follow-Up Testing
1. Substance Abuse Policy

- Must include:
  - Identity of the employer’s Designated Employer Representative
  - Notice of requirement to submit to testing as a condition of employment
  - Prohibited behaviors
  - Actions that constitute a refusal to test (49 CFR Part 40.191)
  - Testing will be conducted in accordance with 49 CFR Part 40
  - Resources for the Return-to-Duty process (Substance Abuse Professional)
  - Employer provisions must be delineated
  - Drug awareness information
  - Disseminate policy to all covered employees and obtain documentation of receipt

1. Policy Template

Available on the FDOT Substance Abuse Management website:

https://sam.cutr.usf.edu/5310-only/
2. Supervisor Training

- Reasonable Suspicion Testing Determination Training
  - Minimum of 60 minutes of training on the signs and symptoms of prohibited drug use
  - Minimum of 60 minutes of training on the signs and symptoms of possible alcohol misuse
- Supervisor must be trained in order to execute a reasonable suspicion test
- No refresher training is required, but it is a best practice
- Supervisor training should also include the logistical information regarding testing
  - Protocols, collection sites, documentation forms, etc.

2. Additional Training Recommendations

- Train supervisors on the FMCSA thresholds for post-accident decision-making and documentation
- Ensure that a trained supervisor is available during all hours of the day in which CDL drivers will be on duty
- Make sure that supervisors are aware of how to coordinate testing when the DER is not available
- Explain the actions/behaviors that constitute a refusal to test
3. Testing Circumstances

- Pre-employment
- Random
- Post-accident
- Reasonable suspicion

- Post-violation tests
  - Return to duty
  - Follow up

Pre-employment

- Pre-employment drug testing is required; alcohol testing is authorized
  - If an employer conducts pre-employment alcohol testing it must be included in the employer’s policy and applied consistently
- A verified negative pre-employment drug test result must be received by the employer, from the MRO, prior to the employee’s first performance of driving duty (this includes driving skills test and behind-the-wheel training)
- Pre-employment testing is also required prior to a covered employee’s return from an absence of 30 days or more (for any reason)
  - Not a return to duty*
  - Must have a negative result prior to the employee resuming driving duties
Random Testing

- FMCSA minimum percentage rates for 2019 are:
  - 25% of the covered employee pool must be tested for prohibited drug use
  - 10% of the covered employee pool must be tested for alcohol misuse
- Employers with a small number of covered employees can join a consortium
  - Consortium must meet minimum percentages
- Employee names must be selected via a “scientifically valid method”
- All covered employees must have an equal chance of being selected each time a draw is made
- Employers can use a software program or a TPA to generate selections
- Updates to the employee pool must be made prior to each new draw

Random Testing Continued

- Testing must be spread throughout the testing period, days of the week and hours of the day (no predictable pattern)
- Employees are required to report immediately for a random test. Note: there is no window of time to report other than the reasonable time it takes to travel from the point of notification to the collection site
- The employer determines the anticipated arrival time at the collection site
- Employer should be monitoring the employee’s arrival time*
- The employee is not permitted to stop at their vehicle/locker/bathroom or make any stops while driving to the collection site
Post-accident testing

- Post-accident drug and alcohol testing is only authorized when the testing thresholds are met.

<table>
<thead>
<tr>
<th>THRESHOLD</th>
<th>CITATION ISSUED TO DRIVER</th>
<th>TEST/NO TEST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human fatality occurs at the scene.</td>
<td>N/A</td>
<td>FEDERAL DRUG AND ALCOHOL TESTING IS REQUIRED</td>
</tr>
<tr>
<td>One or more individuals suffered bodily injury and immediately received medical treatment away from the scene.</td>
<td>A CITATION WAS ISSUED TO DRIVER AT THE SCENE</td>
<td>FEDERAL DRUG AND ALCOHOL TESTING IS REQUIRED</td>
</tr>
<tr>
<td>One or more individuals suffered bodily injury and immediately received medical treatment away from the scene.</td>
<td>No citation was issued to the driver at the scene</td>
<td>DO NOT TEST! FEDERAL TESTING IS PROHIBITED</td>
</tr>
<tr>
<td>One or more vehicles sustains disabling damage and must be towed from the scene.</td>
<td>A CITATION WAS ISSUED TO DRIVER AT THE SCENE</td>
<td>FEDERAL DRUG AND ALCOHOL TESTING IS REQUIRED</td>
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</table>

Post-accident Testing Cont.

- Fatal accidents automatically require drug and alcohol testing as soon as practicable
  - Alcohol test takes priority
  - If the alcohol test is delayed beyond the first 2 hours from the time of the accident, employer must document reason for delay
  - All attempts to perform alcohol testing must cease at 8 hours after the accident
  - Drug testing must be performed within 32 hours
Post-accident Testing Cont.

- Non-fatal accidents:
  - If a citation is issued to driver within 8 hours, alcohol testing must be performed
  - If a citation is issued to driver within 32 hours, drug testing must be performed

Reasonable Suspicion Testing

- Reasonable Suspicion testing must be based on specific, contemporaneous, articulable observations concerning an employee’s behavior, speech and/or body odor
  - Rumor, gossip, or second-hand accounts cannot be used as determining factors
  - Supervisors and other company officials must be trained prior to making a reasonable suspicion testing decision
  - The observations leading to testing must be documented
  - Employers should conduct both drug and alcohol tests (no need to determine the cause of the observations)
Reasonable Suspicion Testing Documentation Form

Can be downloaded from the “5310-only” webpage:

https://sam.cutr.usf.edu/5310-only/

4. Testing Procedures
Urine Collector

- Urine is the only specimen that can be used for federal drug testing
- Collectors must be trained in accordance with 49 CFR Part 40.33
- Split specimen collection method must be used
- A Federal Drug Testing Custody and Control Form must be used

Laboratory

- Urine specimens must be analyzed at a laboratory certified by the Dept. of Health and Human Services
- Urine is analyzed for the metabolites of amphetamines, cocaine, marijuana, opioids and PCP
- Validity testing is also performed
- The laboratory is only permitted to report drug test results to a Medical Review Officer
  - Drug test results never report directly to the employer
Medical Review Officer

- The MRO is a licensed physician who holds a special certification to evaluate lab results and communicate with donors
- An MRO must verify every result processed through the lab.
  - Negative results are reviewed by staff under MRO supervision
  - MRO is required to conduct an interview with the donor for all non-negative results
- MRO will determine if a legitimate medical explanation exists
- MRO (or staff) will report the verified result to the employer

Alcohol Testing Performed by a BAT

- Screening tests: both saliva and breath can be used
- Confirmation tests: only breath specimens can be used
- Confirmation tests must be performed using an Evidential Breath Testing device listed on the USDOT’s website
- Alcohol tests are documented on a DOT Alcohol Testing Form (ATF)
- A confirmed BAC of 0.04 or greater is a violation
- A confirmed BAC of 0.02-0.039 requires the employee to be removed from duty for at least 24 hours
5. Substance Abuse Professional

- The term Substance Abuse Professional is exclusive to the USDOT testing process:
  - The SAP oversees a violating employee’s path to return to duty in the transportation workplace
- Testing positive on a drug test, having a confirmed BAC of 0.04 on an alcohol test or refusing to submit to testing
- Employers must give a list of SAPs (minimum of 2) to every violating applicant and employee, regardless of employer’s policy to terminate

Return-to-Duty Process

- The Return to Duty Process must be completed before the violating employee is able to perform safety-sensitive duty for ANY DOT-covered employer
  - SAP conducts a face-to-face evaluation with violating employee
  - SAP prescribes an education and/or treatment plan
  - SAP conducts a second face-to-face evaluation to determine if employee has satisfactorily completed the treatment plan
  - Clears the employee for return to duty testing
    - RTD drug test is conducted as a direct observation collection
    - If negative, employee can return to safety-sensitive duties
  - SAP provides the follow-up testing plan to the employer
  - Follow-up testing plan can be as long as 5 years
  - Minimum is 6 testing within the first 12 months
  - Follow up drug testing is conducted as a direct observation collection
Previous Employer Background Checks

- Employer must obtain consent from applicant (form available)
- Employer must send the form to all of the applicant’s DOT-covered employers within the 3 years prior to date of application
- If applicant has a violation on their record, the return-to-duty process must be successfully completed before they can perform safety-sensitive duties for any DOT-covered employer (you must request the complete documents)
- If the applicant is still part of a follow-testing plan, your agency assumes the responsibility of completing the testing plan
- The FMCSA Clearinghouse will be opened on January 6, 2020
  - Registration will open in October 2019
  - Paper background checks will be required through January 6, 2023

Cheaters

- Cheaters
- The Whizzinator Touch
- Quick Fix Plus
Resources

- FDOT’s Substance Abuse Management website, specifically the “5310-only” page: [https://sam.cutr.usf.edu/5310-only/](https://sam.cutr.usf.edu/5310-only/)

- Federal Motor Carrier Safety Administration website: [https://www.fmcsa.dot.gov/regulations](https://www.fmcsa.dot.gov/regulations)

- FSSolutions, state-contracted Third Party Administrator
  - If you are interested in purchasing services, contact Mary Ann Mesaros [MMesaros@fssolutions.com](mailto:MMesaros@fssolutions.com)
  - Let them know that you are a 5310 agency operating CDL vehicles

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**Question and Answer Period**

Q&A
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