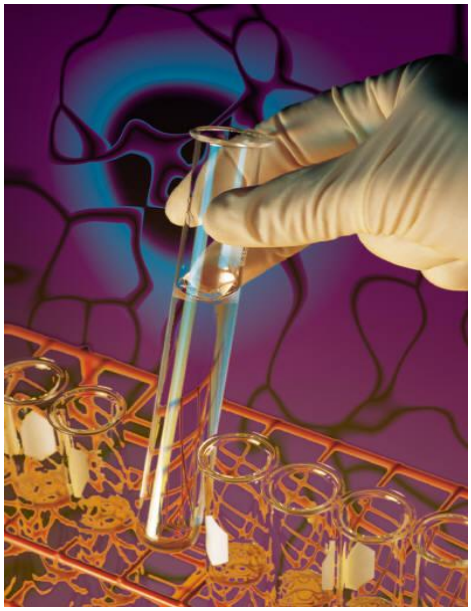
U.S. Department of Transportation
Office of the Secretary

Office of Drug and Alcohol Policy and Compliance



What Employers Need To Know About DOT Drug and Alcohol Testing

[Guidance and Best Practices]

U.S. Department of Transportation
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What Employers Need To Know About DOT Drug and Alcohol Testing *[Guidance and Best Practices]*

If you employ safety-sensitive workers who must have Department of Transportation (DOT) drug and alcohol tests, or you manage a DOT drug or alcohol testing program, this publication can help you understand how to run an excellent program that meets DOT requirements.

This is not a legal document that adds to or makes any official interpretations of DOT rules. This publication is for educational purposes only. This booklet is a companion to our earlier publication for employees, "What Employees Need to Know About DOT Drug & Alcohol Testing."

For questions about the rules, please contact the Office of Drug and Alcohol Policy and Compliance at 202.366.3784 or e-mail us from our website at http://www.dot.gov/ost/dapc/question.html . You can find contact information about DOT Agency and United States Coast Guard drug and alcohol program managers on our website at: http://www.dot.gov/ost/dapc/oamanagers.html .

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Table of Contents

Page

4	Introduction	Secretary of Transportation Statement
5	Overview	DOT Guidance and Best Practices Overview
6	Section I.	DOT Program Implementation and Regulations
8	Section II.	Identifying Employees Needing To Be Tested
9	Section III.	Program Policies and Assigning Responsibilities
11	Section IV.	Selecting Service Agents and Their Roles
14	Section V.	Employee and Supervisor Education and Training
15	Section VI.	Drug and Alcohol Testing Requirements
23	Section VII.	Employer Actions When Employees Violate the Rules
30	Section VIII.	Record Keeping and Data Collection Requirements
36	Section IX.	Program Compliance and Inspections / Audits
38	*Appendix A*	*Company DOT Testing Policy Requirements*
48	*Appendix B*	*Collection Site Security and Integrity*
49	*Appendix C*	*Selecting Service Agents*
53	*Appendix D*	*Post Accident Testing Criteria*
57	*Appendix E*	*Prior Testing History Release of Information Format*
58	*Appendix F*	*DOT&USCG Drug and Alcohol Program Manager Contact Information*
59	*Appendix G*	*Audit/Inspection/Investigation/Compliance Records Review*

Introduction: “Why is this program so important?”

Safety is our no. 1 priority at the U.S. Department of Transportation. And a cornerstone of our safety policy is ensuring that transportation providers across all modes – on roads, rails, water, or in the air, over land and underground – employ operators who are 100 percent drug- and alcohol-free. We want – and we insist upon – safety-conscious employees at all times and under all circumstances.

Fortunately, the transportation industry over time has worked hard to reduce the number of accidents and crashes directly related to drug and alcohol use. Nevertheless, human risk factors remain – and some transportation workers do use illicit drugs, or abuse alcohol, despite serious efforts to deter them.

We must never stop trying to improve our safety record where substance abuse is concerned. We can start by making sure that employees are properly educated on the personal and professional consequences of drug use and alcohol misuse. Supervisors must be appropriately trained to identify signs and symptoms of drug and alcohol use.

Employers must also have strong drug and alcohol testing programs. And employees must be removed from safety-sensitive duties immediately after they violate drug and alcohol testing rules. It is very important that employees are not returned to safety-sensitive duty until they are referred for evaluation and have successfully complied with treatment recommendations.

I know you will support these important measures, so that we can assure the traveling public that our transportation system is the safest it can possibly be.

Ray LaHood
Secretary of Transportation
U.S. Department of Transportation
July 2009

DOT Guidance and Best Practices Overview

Section I. DOT Program Implementation and Regulations

Section II. Identifying Employees Needing To Be Tested

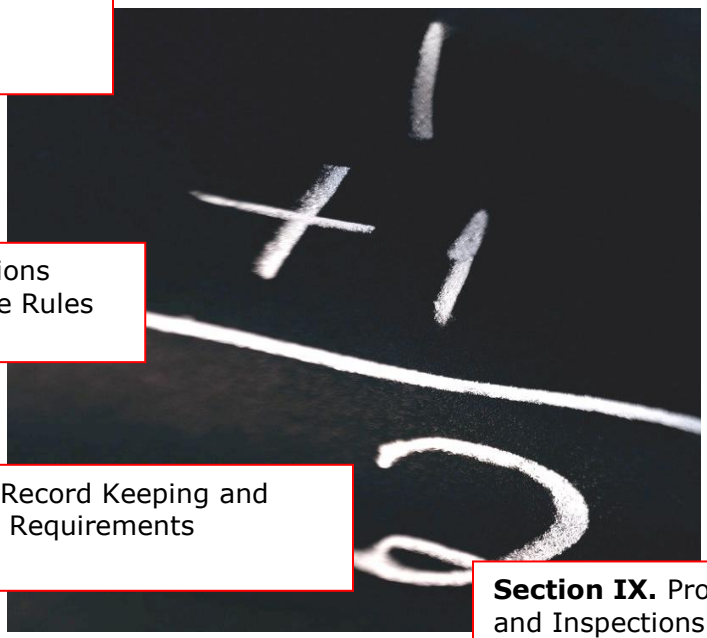
Section III. Program Polices and Assigning Responsibilities

Section IV. Selecting Service Agents and Their Roles

- *Collectors*
- *Breath Alcohol Technicians*
- *Screening Test Technicians*
- *Laboratories*
- *Medical Review Officers*
- *Substance Abuse Professionals*
- *Consortia/Third Party Administrators*

Section V. Employee and Supervisor Education and Training

Section VI. Drug and Alcohol Testing Requirements



Section VII. Employer Actions When Employees Violate the Rules

Section VIII. Record Keeping and Data Collection Requirements

Section IX. Program Compliance and Inspections / Audits

Section I. DOT Program Implementation and Regulations

As an employer, do I have to do DOT testing?

Yes, if you or your employees are subject to the DOT drug and alcohol testing regulations. The DOT Agencies and U.S. Coast Guard (USCG) have regulations that require certain employers to comply with drug and alcohol testing rules. To see if your company is covered, you can go to a feature on our website called, "Am I Covered?" at: http://www.dot.gov/ost/dapc/odapc/v3_slide0001.htm. The following chart sets out the general types of employers our rules cover:

	DOT Agency	**Regulation**	**Industry**
FMCSA	Federal Motor Carrier Safety Administration	49 CFR Part 382	Motor Carrier
FAA	Federal Aviation Administration	14 CFR Part 120	Air Carriers or operators and certain contract air traffic control towers
FRA	Federal Railroad Administration	49 CFR Part 219	Rail
FTA	Federal Transit Administration	49 CFR Part 655	Public Transportation
PHMSA	Pipeline and Hazardous Materials Safety Administration	49 CFR Part 199	Operators of pipeline facilities and contractors performing covered functions for the operator
USCG	US Coast Guard [Department of Homeland Security]	46 CFR Parts 4 & 16	Maritime

You can find these regulations at: http://www.dot.gov/ost/dapc/oamanagers.html.

What is 49 CFR Part 40 and how is it different from the DOT Agency and USCG regulations?

49 CFR Part 40, or "Part 40" as we call it, is a DOT-wide regulation that states *how* to conduct testing and *how* to return employees to safety-sensitive duties after they violate a DOT drug and alcohol regulation. Part 40 applies to all DOT-required testing, regardless of what DOT agency-specific rule applies to an employer. For example, whether you are an airline covered by FAA rules or a trucking company covered by FMCSA rules, Part 40 procedures for collecting and testing specimens and reporting of test results apply to you.

Each DOT Agency-specific regulation spells out *who* is subject to testing, *when* and in *what* situations for a particular transportation industry.

Where can I get a copy of Part 40?

You can obtain a copy of Part 40 by contacting our office at 202.366.3784 or from our website at: http://www.dot.gov/ost/dapc/NEW_DOCS/Part40.doc.

Is there a website that gives me easy access to all the DOT's program requirements?

Yes. Most things you and others who help you with your program need to know about the drug and alcohol testing requirements are available on our website at: http://www.dot.gov/ost/dapc. There is also an "Employer Page" at: http://www.dot.gov/ost/dapc/employer.html.

Section II. Identifying Employees Needing To Be Tested

Who are safety-sensitive employees and why are they tested?

Pilots, truck drivers, subway operators, ship captains, pipeline controllers, airline mechanics, locomotive engineers, and bus drivers are just some of the transportation workers that we depend upon to be as clear-headed and as alert as possible at all times. As a safety agency, the DOT can demand nothing less. Use of illegal drugs and misuse of alcohol are not compatible with performing these vital functions. The history of our program began with some fatal accidents that illegal drug use or alcohol misuse helped to cause. Congress passed a law – the Omnibus Transportation Employees Testing Act of 1991 – that requires DOT Agencies to test safety-sensitive transportation workers.

This table lists the types of safety-sensitive duties subject to DOT drug and alcohol testing:

Transportation Industry	Safety-Sensitive Duties
Commercial Motor Carriers (FMCSA)	Commercial Drivers License (CDL) holders who operate a Commercial Motor Vehicle.
Aviation (FAA)	Flight crew, flight attendants, flight instructors; air traffic controllers at facilities not operated by the FAA or under contract to the U.S. military; aircraft dispatchers; aircraft maintenance or preventative maintenance personnel; ground security coordinators and aviation screeners.
Railroad (FRA)	Persons who perform duties subject to the Hours of Service laws; such as, locomotive engineers, trainmen, conductors, switchmen, locomotive hostlers/helpers, utility employees, signalmen, operators and train dispatchers.
Public Transportation (FTA)	Operators of revenue service vehicles, CDL-holding operators of non-revenue service vehicles, vehicle controllers, revenue service vehicle mechanics, firearm-carrying security personnel.
Pipeline (PHMSA)	Persons who perform operations, maintenance, or emergency response function on a pipeline or LNG facility regulated under part 192, 193, or 195.
Maritime (USCG) [Follows Part 40 for drug testing, not alcohol testing.]	Crewmembers operating a commercial vessel.

Section III. Program Policies and Assigning Responsibilities

Do I need to have written policies that explain my program?

Yes. The DOT Agencies and USCG require employers covered under their regulations to have policies in place that fully explain their drug and alcohol program. Not only must you have policies, but you must also make them available to employees covered under your DOT program.

You can find DOT Agency and USCG policy requirements at Appendix A.

What is a DER and what does a DER do?

1. DERs should be readily available.
2. To ensure good coverage, a best practice is to have multiple DERs.

The Designated Employer Representative (DER) is your key employee for many drug and alcohol program functions. The DER must be a company employee. DERs cannot be contractors or service agents. The only exception is when C/TPAs function as DERs for owner-operator truck drivers.

The DER gets test results from the Medical Review Officer (MRO) and Breath Alcohol Technician (BAT) and takes immediate action to remove employees from their safety-sensitive duties when they violate drug and alcohol testing rules, such as test positive or refuse a test. A company may have more than one DER to ensure adequate coverage on all shifts and at all locations, with perhaps a drug and alcohol program manager to coordinate the entire program and assure consistency among DERs. As an employer, you must give your service agents the DER contact information in case they need to speak directly with the DER without delay.

The DER should have knowledge of and authority to make decisions about the testing process and answer questions about it. Again, the primary job of the DER is to ensure the appropriate and timely removal of an employee from safety-sensitive duties.

What are my options in administering my DOT drug and alcohol testing program?

There are three general ways in which you can run your DOT drug and alcohol testing program:

Option 1: Administer the program internally. You would have on your own staff urine specimen collectors and Screening Test Technicians (STTs) / BATs, MROs, and Substance Abuse Professionals (SAPs) and support staff to run the program. The testing laboratory would be the only part of your program outside your own organization.

Option 2: Outsource some of the program functions to service agents. For example, you could have your own MRO and SAP but contract with urine specimen collectors and STTs / BATs to perform the collections, while keeping a support staff to run the program.

Option 3: Outsource all of the program's functions to a vendor, called a "consortium" or a "third-party administrator" (C/TPA), with only a DER and the DER's support staff, if any, remaining in-house.

NOTE: As an owner-operator in the motor carrier industry, FMCSA regulations require you to belong to a C/TPA to ensure your compliance with random testing.

Can I have my own company testing program in addition to my DOT testing program?

You may have your own "company authority" testing program. Under a non-DOT program, you could test for other drugs of your choosing. Therefore, you would not be prohibited by DOT from testing for additional drugs under your own authority – under your non-DOT company policy testing. Nor would DOT prohibit you from using non-urine specimens under your non-DOT program.

1. In your drug and alcohol testing policy, you must be very clear about which requirements are under DOT authority and which are under your company authority.
2. You must also keep DOT test records separated from your company-authority test records.

However, you would need to follow Part 40 and the appropriate DOT Agency and USCG regulations and totally separate your DOT testing from your non-DOT company policy testing. For example, if you conduct DOT and non-DOT tests of an employee following an accident, you must ensure that the DOT urine collection for drugs and DOT test for alcohol are accomplished first. Then you would let the employee know the DOT portion was completed and that you will now be conducting a company policy test. In addition, you must not use the Federal Drug Testing Custody and Control Form (CCF) or the DOT Alcohol Testing Form (ATF) for your non-DOT testing. You would use non-Federal and non-DOT forms.

Section IV. Selecting Service Agents and Their Roles

What is a service agent and how can a service agent assist me?

A service agent is any person outside your company that you use to help you implement the DOT regulations. These might include a urine collector, a BAT, an STT, a laboratory, an MRO, a SAP, or a C/TPA in charge of coordinating your testing services.

You can use a service agent to administer part or all of your DOT drug and alcohol testing program. If you use a service agent, you should take a "hands-on" approach, and you should not assume the service agent will do everything right.

Are your service agents qualified? When was the last time you checked their training records and the quality of work they do?

Should I enter into a contract with a service agent?

1. A best practice is to stay in touch with your service agents to make sure they are keeping you in compliance.
2. Another best practice is for you to audit the work of your service agents from time to time.

It is up to you whether or not to use a service agent. If you use service agents, the rules do not require a written contract, but having a written contract makes good business sense. A contract should include how and where services will be provided, prices, and who will do what and when. To protect yourself, you should include a provision in the contract that allows you to replace the service agent if the service agent isn't providing services that comply with DOT rules.

Be a smart buyer. You should ask questions to make sure the service agent is providing the kind of service you want and need. For example, if a C/TPA is providing a network of collection sites, will the C/TPA verify the qualifications of the collectors and evaluate the integrity of the collection sites? Will it act as an intermediary in resolving collection site issues? Will the C/TPA use a scientifically valid way of making selections for random testing? How often will the C/TPA perform random selections? How quickly does the C/TPA's MRO provide results after a test?

Who are the service agents and what are their responsibilities in DOT's testing program?

This chart lists most of the types of service agents that work in the DOT drug and alcohol testing program and their responsibilities:

Type of Service Agent	Responsibilities	Where can I find their qualifications?
Urine Collector	Collect urine specimens using Part 40 procedures, ship the specimens to Department of Health and Human Services (HHS) certified laboratories for analysis, and distribute copies of the CCF to the laboratory, MRO, employer, and employee in a timely and confidential manner. The collector is required to maintain collection site security and integrity (see **Appendix B** and **video**.)	49 CFR Part 40 Section 40.33
Laboratory	Receive, analyze, and report laboratory confirmed results only to MROs. The laboratory must be certified by the HHS.	49 CFR Part 40 Section 40.81
Medical Review Officer (MRO)	Receive laboratory confirmed urine drug test results; determine whether there is a legitimate medical explanation for a laboratory-confirmed positive, adulterated, or substituted result; and review and report a verified result to the employer in a timely and confidential manner.	49 CFR Part 40 Section 40.121
Screening Test Technician (STT)	Conduct an alcohol screening test (i.e., the first test given to an employee). It can be either a breath or saliva test. The STT documents the test result on an ATF and transmits the results to the employer in a timely and confidential manner.	49 CFR Part 40 Section 40.213
Breath Alcohol Technician (BAT)	Conduct alcohol screening and confirmation tests (i.e., the second test given to an employee whose screening test result is .02 or above) by collecting and analyzing breath specimens using an approved screening device and an evidential breath testing (EBT) device, document the results of the test on a DOT ATF, and transmit the results to the employer in a timely and confidential manner.	49 CFR Part 40 Section 40.213

Type of Service Agent	Responsibility	Where can I find their qualifications?
Substance Abuse Professional (SAP)	Evaluate employees who have violated DOT drug and alcohol regulations and make recommendations concerning education, treatment, follow-up testing, and aftercare. The SAP determines if the employee demonstrates successful compliance with the recommended education and treatment.	49 CFR Part 40 Section 40.281
Consortium / Third Party Administrator (C/TPA)	A service agent who coordinates a variety of drug and alcohol testing services for employers. These services can include random selections; preparation of annual Management Information System (MIS) reports; and coordinating urine collections, laboratory testing, MRO services, alcohol testing, and SAP evaluations. A C/TPA must ensure the services it provides comply with DOT regulations and that its service agents are qualified.	49 CFR Part 40 Subpart Q

For important pointers for selecting service agents, see Appendix C.

Section V. Employee and Supervisor Education and Training

What educational materials do I need to give to my employees?

You must provide employees who perform DOT safety-sensitive functions materials that explain the DOT requirements. You must document that they received the materials. At the very least, you should include:

- The name and contact information of persons assigned to answer questions about the program.
- The duties of the employees who are subject to the program.
- Employee conduct that is prohibited by the regulations.
- The requirement that employees must be tested for drugs and alcohol.
- When and under what circumstances employees will be tested.
- The testing procedures that will be used.
- An explanation of what constitutes a refusal to test.
- An explanation of the consequences of refusing a test.
- The consequences of violating the DOT rules.
- Information on the effects of drugs and alcohol on a person's health, work, and personal life.
- The signs and symptoms of drug use and alcohol misuse.
- The name and contact information of an individual or organization that can provide counseling and access to treatment programs.

There are also training requirements for supervisors and other officials about reasonable suspicion and reasonable cause testing:

Type of Training	Duration	Documentation of training required?	Recurring training required?
Indicators of Probable Drug Use	1 Hour	Yes	Recommended as Best Practice
Indicators of Probable Alcohol Use	1 Hour	Yes	Recommended as Best Practice

Employers must follow other requirements that DOT Agencies and USCG rules have for employee and supervisor education and training.

FRA also requires supervisors to have at least 1 hour of post-accident training.

Section VI. Drug and Alcohol Testing Requirements

What specimens are collected for DOT drug and alcohol tests?

DOT drug tests are conducted only using urine specimens. DOT alcohol screening tests are conducted using either breath or saliva. DOT alcohol confirmation tests must be conducted using Evidential Breath Testing Devices (EBTs) that only analyze breath.

In addition to urine testing for drugs, the FRA also requires blood specimens for its Post-Accident testing.

The USCG permits collection of blood specimens for its Serious Marine Incident (SMI) testing.

Where must I have DOT urine specimens analyzed?

DOT urine specimens can only be tested at drug testing laboratories certified by the HHS. There are no "point of contact" or "instant" tests permitted by the DOT. All specimens must be urine.

You can find the current HHS laboratory listing at:
http://workplace.samhsa.gov/DrugTesting/Level_1_Pages/CertifiedLabs.html

For what drugs does DOT require me to test?

DOT urine specimens are analyzed for the following drugs or drug metabolites:

- Marijuana metabolites / THC
- Cocaine metabolites
- Phencyclidine (PCP)
- Amphetamines and Methamphetamine
- Opiate metabolites [Codeine, Morphine, and Heroin]

1. You cannot test for any other drugs using a urine specimen collected for a DOT test.
2. DOT specimens cannot be tested for other purposes either, for example a DNA test.

What types of DOT tests must I conduct?

You must give employees the following kinds of tests, when called for by DOT Agency and USCG rules:

- Pre-employment
- Random
- Reasonable Suspicion / Reasonable Cause
- Post-Accident
- Return-to-Duty
- Follow-up

Here are explanations about each type of test:

PRE-EMPLOYMENT

Drug Tests: You are required to: (1) Conduct a pre-employment drug test; and (2) Receive from the MRO a negative test result on the pre-employment drug test for a person prior to hiring or prior to using that person in a safety-sensitive position for the first time. This requirement also applies when a current employee is transferring from a non-safety sensitive position to a safely-sensitive job for the first time.

Alcohol Tests: Unless you are regulated by the USCG, you may conduct pre-employment alcohol testing under DOT authority, but only if two conditions are met: (1) The pre-employment alcohol testing must be accomplished for all applicants [and transfers], not just some; and (2) The testing must be conducted as a post-offer requirement – meaning you must inform the applicant that he or she has the job if he or she passes a DOT alcohol test.

The FAA has specific "prior-to-hire" and "transfer into safety-sensitive function" requirements. They also require employers to receive MRO written confirmation of negative pre-employment drug test results. Check FAA regulations for details.

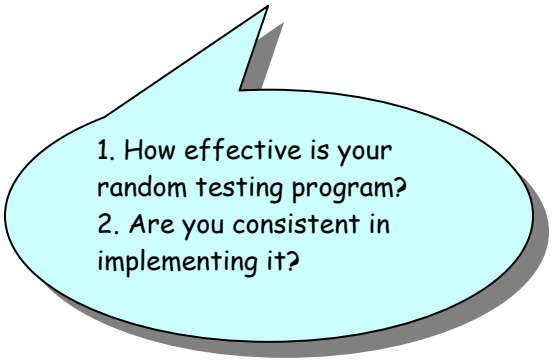
The FRA has a one-time pre-employment drug test requirement for each employee subject to the "Hours of Service" laws. Check FRA regulations for details.

The FTA requires employees who have been removed from the random testing pool and out of work for 90 or more days to have pre-employment tests upon return.

The USCG requires employees who have not been subject to random drug testing for at least 60 days of the last 185 days to be pre-employment tested.

RANDOM

Random tests are the key part of your program since they deter employees from using drugs and misusing alcohol. Unless you are regulated by FRA, you don't need to submit a random testing plan to DOT. However, it is a good idea for you to have a written plan to help you to objectively and consistently apply your program.



Each DOT Agency sets the random rates for drug and alcohol testing in the industry it regulates. These testing rates are minimums. You can choose to set higher random testing rates for your company.

So if a DOT Agency requires a drug testing rate of 50% and an alcohol testing rate of 10%, then an employer with 100 safety-sensitive employees would have to ensure that 50 or more random drug tests and 10 or more random alcohol tests were conducted during the calendar year.

This doesn't mean that you necessarily will give random drug tests to 50 different employees or random alcohol tests to 10 different employees. Some might be picked and tested more than once, and others not at all. It's just that each time there is a random selection, all employees have an equal chance to be selected and tested.

That's the deterrent factor!

What makes random testing so effective is the element of surprise. While employees know they will be tested, they are never quite sure of when. Random selections and testing should be performed at least quarterly. Some employers are selecting and testing more frequently. We think that is a good idea.

Employers and C/TPAs subject to more than one DOT Agency drug and alcohol testing rule may combine covered DOT safety-sensitive employees into a single random pool (for example, train engineers and truck drivers). However, companies doing so must test at or above the highest minimum annual random testing rates established by the DOT Agencies involved. So, if you have FMCSA regulated- and FRA regulated-employees in the same pool, and FMCSA has a 50% testing rate and FRA has a 25% rate, you must test the whole pool at the 50% minimum rate.

It is important to note that PHMSA and USCG do not authorize random alcohol testing for employees in the pipeline and maritime industries. So, if employees perform only pipeline or maritime duties, they cannot be in any DOT-regulated random alcohol testing pool.

You can find the current DOT Agency and USCG random testing rates at: http://www.dot.gov/ost/dapc/rates.html.

Check out "Best Practices for DOT Random Drug and Alcohol Testing" at: http://www.dot.gov/ost/dapc/testingpubs/random testing brochure.pdf.

Reasonable Suspicion / Reasonable Cause

You are required to conduct a test for drugs or alcohol [or both] if a trained supervisor or trained company official believes or suspects an employee is under the influence of drugs or alcohol [or both]. The supervisor or company official must have been trained to recognize the signs and symptoms of drug and alcohol use. Testing cannot be required based solely on a guess or hunch or complaint from another person or phone call tip. The suspicion must be based on specific observations by the supervisor or company official concerning the employee's current appearance, behavior, speech, and smell that are usually associated with drug or alcohol use.

The reasonable suspicion / reasonable cause observations of the supervisor or company official must be documented.

The FRA requires two supervisors – at least one of whom is trained and on site – to make the testing determination. FAA does not require the determination to be face-to-face.

Post-Accident

You are required by the DOT Agencies and USCG to conduct drug and alcohol tests following qualifying accidents. The following table summarizes post-accident time-frames and specimens that must be collected:

DOT Agency	Specimen Type	Time Frame for Collection
FMCSA, FAA, FTA, PHMSA, USCG	Urine for drug testing.	Up to 32 hours from time of event.
FMCSA, FAA, FTA, PHMSA	Saliva or breath for alcohol screening; breath for alcohol confirmation testing.	Within 2 hours, but cannot exceed 8 hours from time of event.
FRA	Urine for drug testing. Blood for drug and alcohol testing.	Up to 4 hours from time of event, but may exceed time frame to collect specimen – in every case, a blood and urine specimen must be collected.
USCG	Breath, Saliva, or Blood for alcohol testing.	Within 2 hours of the event. Up to 8 hours may be allowed if there are safety concerns to be addressed.

The supervisor at the scene of the accident/event should know the testing criteria and make a good faith effort decision to test or not test based on the information available at the time. The supervisor may consult with others, but the supervisor is the person who has to make the decision. If the testing cannot happen within the required time, the supervisor must document the reasons. Any employee required to be tested but needs medical assistance, must get the needed medical assistance first.

- You can find the DOT Agency and USCG post-accident testing criteria at Appendix D.

- Railroads must provide FRA the results of any breath alcohol tests that were accomplished.

- FRA also requires collection of identified tissue and blood specimens from all employees who die as a result of the qualifying event.

- FAA does not require a supervisor to be on-scene.

Return-to-Duty and Follow-Up

When an employee tests positive or refuses a test or violates other provisions of DOT Agency and USCG testing regulations, that employee cannot work again in DOT safety-sensitive positions until successfully completing the SAP return-to-duty requirements in Part 40.

After successfully completing the SAP requirements, the employee may be eligible to return to work. But, before an employer can return the person to work in a safety-sensitive job, a SAP must determine that the employee successfully complied with the recommended treatment and education. The employee must then have a **return-to-duty test** and the test result must be **negative**.

The SAP will also develop the employee's **follow-up testing** plan – outlining for the employer the number and frequency of follow-up testing that will take place.

You are then responsible for ensuring that the employee is tested according to the SAP's follow-up plan. These tests can be for drugs or alcohol or both.

The SAP must direct at least 6 follow-up tests in the first 12 months after the person returns safety-sensitive duties. However, the SAP can direct more tests and may extend them for up to five years.

1. Don't forget, these tests are the employer's responsibility to conduct.
2. Follow-up tests must be unannounced.
3. You cannot let the employee know anything about your SAP's plan for follow-up testing.
4. You cannot substitute other tests (such as random testing) for follow-up testing.
5. Return-to-duty and follow-up drug testing must be under direct observation.

- Under FRA regulations, locomotive engineers are subject to both drug and alcohol follow-up tests in the first 12 months.

How do I notify employees they have been selected for testing?

Every employee should be discreetly notified that they have to go for a test. Testing must be conducted in strict confidence with only a limited number of company officials having knowledge of the selection. You should have procedures in place to ensure that each employee receives no advanced notice of selection.

Why? Because it helps maintain the element of surprise!

But, be sure to allow enough time before notification for supervisors to schedule for administration of the test and to ensure that collection sites are open for testing.

After I notify the employees of their selection, how long do I give them to get to the collection site?

When an employee is notified, he or she must proceed immediately to the collection site. Contrary to the *urban legends* circulating among some employees, *immediately* does not mean two hours. *Immediately* means that after notification, all the employee's actions must lead to an immediate specimen collection.

Why? For the integrity of the testing process!

Have best practice procedures in place to make sure the employee reports directly to the collection site without a chance to prepare to cheat on the test:
1. If possible, accompany employees to collection sites.
2. Do not allow employees to go unescorted to their lockers, personal vehicles, or work stations after notification.
3. When possible, arrange to have collectors and BATs come to the work site to collect specimens – without alerting employees to their presence.
4. If collections are off site and unescorted, establish an expected time of arrival.

Many employers develop testing policies that clearly state what activities are acceptable after notification. For instance, which safety-sensitive duties DOT Agency regulations may permit them to complete when selected for a random test. For example, if an employee is notified of a random test while working "off site" or "on the road," your policies should spell-out exactly what the employee must do before resuming safety-sensitive functions. That way there is no misunderstanding among employees about what is expected.

Make it clear to your employees that there are consequences for failing to appear for any test within a reasonable time.

- For pre-employment and return-to-duty testing, ensure that the applicant or employee knows the specific date, time, and location of the test.

What forms are required for DOT testing and who issues them?

The *Federal Drug Testing Custody and Control Form* must be used for DOT drug tests and the *Department of Transportation Alcohol Testing Form* must be used for DOT alcohol tests. There are various vendors that supply these forms to employers, collectors, and STTs and BATs. Laboratories and C/TPAs usually provide forms to collection sites and manufacturers of alcohol testing devices usually provide forms to STTs and BATs – of course, there is a cost associated with printing the forms.

- You can find CCFs and ATFs at: http://www.dot.gov/ost/dapc/documents.html
- The FRA requires the use of a specific form for its Post-Accident testing. You can find it at: http://www.fra.dot.gov/downloads/safety/F618074.PDF
- The USCG allows the use of a specific form – CG-719P – to report periodic test results. You can find it at: http://www.uscg.mil/STCW/index.htm

What is split specimen testing and who pays for it?

At the collection site, a collector will pour an employee's urine into two separate bottles – Bottle A [Primary] and Bottle B [Split]. The collector sends both to the laboratory where Bottle A gets tested. If the MRO reports the employee's test result as positive or as a refusal to test because it was adulterated or substituted, the MRO will offer the employee an opportunity to have the Bottle B – the Split – tested at another laboratory. The split test is an independent way to determine if the primary test results were accurate.

1. Payment arrangements for the split specimen should be worked out in advance.
2. The decision of who pays is left to the employer and employees.
3. But, ultimately it is the employer's responsibility to ensure the split test takes place without delay.

The employee has 72 hours to request the split test. Upon getting the request, the MRO must immediately have the primary laboratory send the split to another HHS-certified laboratory for testing. Congress gave the employee the right to have the split tested, so if the employee asks to have the spilt tested, the test must happen no matter who pays for it. No one can insist on payment before the test occurs, either. However, it is between you and the employee who ultimately will pay. It is your responsibility to get the test accomplished without delay and regardless of who pays.

Some employers make a decision to pay for the split testing. Others have agreements to share the cost with the employee. We know of other employers who agree to pay if the split specimen fails to reconfirm the primary specimen's results; and the employee pays if the split result turns out to be same as the primary result. Payment can be also taken from the employee's paycheck – even if it's the last paycheck with you. But under no circumstances can you hold up a split from being tested while waiting for payment.

What are "blind specimens" and am I required to submit them?

DOT requires you to send quality control specimens – or blind specimens – to the laboratory or laboratories you use as one way of making sure that testing is accurate. Some blind specimens will have known amounts of drugs or contaminants in them, and some will contain no drugs or contaminants. To ensure that laboratories cannot tell a blind specimen from any other, blinds have to be sealed, identified, and packaged just like the real thing. Your MRO will compare the known results with the laboratory results.

You can submit the blind specimens yourself or you can have a service agent – such as a C/TPA – do it for you. Figuring out if you have to submit blinds and how many to send and when, can be a little difficult. That is why the DOT does not make employers with less than 2000 safety-sensitive employees send them in. C/TPAs serving less than 2000 total covered employees don't have to send any in, either.

For the rest of you – employers with, and C/TPAs serving, more than 2000 covered employees – here are some of the ground-rules for sending in blind specimens:

- Don't send them to laboratories that test less than 100 specimens annually for you.
- The number of blinds should equal 1% of the total specimens you send to the laboratory.
- The number of blinds you need to send to any laboratory is capped at 50 per quarter.
- 75% of your blinds must be certified as negative.
- 15% must be positive for one or more drugs for which DOT required you to test.
- 10% must be adulterated and / or substituted.
- They must be submitted throughout the calendar year.
- CCFs accompanying blinds to the laboratory must be filled-out like any other CCF.

You can find makers of blind specimens on the HHS website:
http://workplace.samhsa.gov/DrugTesting/pdf/BlindSampleSuppliers081409.pdf

Section VII. Employer Actions When Employees Violate the Rules

What must I do when an employee tests positive, or refuses a test, or has some other violation of DOT Agency or USCG regulations?

You must immediately remove the employee from safety-sensitive functions and give the employee a list of qualified SAPs. This list must have SAPs who are suitable to you and readily available to the employee. Instead of a list of SAPs, you may provide the name and phone number of a SAP network that will offer qualified SAPs to the employee when they contact the employee or the employee calls them.

Double-check to make sure your SAP meets all the DOT's Part 40 qualification requirments. These include checking for credentials, training, and examination.

NOTE: When an applicant fails or refuses a pre-employment DOT test, you cannot let the applicant perform safety-senstivie duties for you, and you must provide a SAP listing to the applicant.

You cannot charge an applicant or an employee for the SAP list, and you may have your TPA or another service agent provide the list.

Can I fire an employee who tests positive or refuses a test?

That's your decision, subject to your policies and applicable legal or collective bargaining requirements. DOT rules don't decide this for you. The same goes for other personnel decisions – like other disciplinary action, hiring, suspensions, or leaves of absence. What our rules require is that **no one who violates a rule can perform safety-sensitive functions again until successfully completing the SAP return-to-duty process**.

Other than giving the SAP listing, am I required to provide SAP and treatment services to employees?

No. The DOT does not require you to provide SAP evaluation services or any of the SAP's recommended education or treatment for an employee who has violated a DOT drug and alcohol regulation.

However, if you offer that employee an opportunity to return to a DOT safety-sensitive duty following a violation, you must, before the employee again performs that duty, ensure that the employee received a SAP evaluation and the employee successfully complied with the SAP's evaluation recommendations.

What is involved in an employee's SAP return-to-duty process?

The SAP makes a face-to-face clinical assessment and evaluation to figure out what assistance is needed by the employee to resolve problems with drug use and alcohol misuse. Next, the SAP refers the employee to an appropriate program for education or treatment, or both. Following that, the SAP conducts another face-to-face evaluation – the follow-up evaluation – to determine if the employee actively participated in the program and

has demonstrated successful compliance with the initial assessment and evaluation recommendations. For this review, the SAP must have conferred with the education and treatment program and should have any reports and materials they provided for review.

You should receive from the SAP an initial evaluation letter outlining the treatment and education recommendations. Your second letter from the SAP should include the SAP's clinical characterization of the employee's level of participation in treatment and education and a statement about whether or not the employee demonstrated successful compliance with the program. If the employee successfully complied with the SAP's recommendations, this letter should also contain any plans for aftercare treatment and a follow-up testing plan.

1. The SAP will provide you with reports about the initial evaluation and the follow-up evaluation.
2. The follow-up evaluation report will contain the SAP's plan for follow-up testing.

You can find the DOT's SAP Guidelines at:
http://www.dot.gov/ost/dapc/testingpubs/SAP Guide Aug09.doc.

Can I confer with a SAP about the employee's testing without having the employee's permission?

Yes you can! The DOT authorizes you and the SAP to confer about the employee's DOT testing– no employee permission needed. This also includes the SAP getting information from you even if you fired the employee. The information the SAP obtains from the employer may help determine the best course of treatment or education, or both for the employee.

Do I need to verify an employee's prior drug and alcohol testing history?

Yes! Before you hire or transfer someone into a safety-sensitive position, you must check the person's DOT drug and alcohol testing history. You need to check with any DOT-regulated company that employed the person during the past two years – unless you are regulated by FMCSA, FAA, or FRA. FMCSA requires a three-year records check for drivers; FAA requires a five-year records check for pilots; and FRA requires a five-year records check for locomotive engineers.

You must get the person's written consent to seek the information from other employers. The person must list all previous and current employers within the last two, three, or five years, as appropriate. If the person doesn't do so, or refuses to sign the consent form, you cannot allow the person to perform safety-sensitive functions.

Keep in mind that the consent must be a specific release authorizing the new employer to receive testing information from a specific former or current employer about a specific employee. It cannot be a "blanket" release: For example, it cannot have multiple employers on one release form; it must be employee-specific; it must be employer-specific; and it must be time-period specific.

Also, the consent cannot be part of another DOT requirement such as a motor vehicle check, credit history, or criminal background check. The consent needs to be an original signed form for each identified DOT regulated employer needing to provide testing information.

If possible, you must obtain and review the testing history before the employee first performs safety-sensitive functions for you. If this is not feasible, you must obtain and review the information as soon as possible. However, you must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions unless you have obtained, or made and documented a good faith effort to obtain, the information from previous employers.

1. Blanket releases are not permitted!
2. The 40.25 release must be employee, employer, and time-period specific.

If the information you receive shows that the person violated DOT rules, you must make sure that the employee has successfully completed the DOT return-to-duty process before permitting the person to perform safety-sensitive duties.

The requirements for these releases are in Part 40, at Section 40.25. For a sample employee 40.25 consent form, see Appendix E.

Can I use a service agent to help obtain or provide an employee's prior drug and alcohol testing history?

Yes. You may use a service agent to help with this information. If you use a service agent to obtain the information on your behalf, the service agent must also be identified on the release form along with your employer identifying information. If you use a service agent to provide the information to a gaining employer, the service agent cannot withhold the information pending payment.

Service agents maintaining testing information for DOT regulated employers cannot disclose employee test information to other parties unless the employee provides a specific written consent to do so, unless DOT says otherwise in Part 40 [at 40.331].

What exactly is a refusal to test and who determines it?

The DOT regulations outline refusals to test for drugs and alcohol. Some refusals are determined by MROs and BATs and STTs. For others, the determination is your responsibility. All have clear instructions from DOT. You must base your decisions on these DOT instructions and NOT on personal opinions about whether the employee is a long-time reliable worker; has ever tested positive or refused a test; was correctly selected for the test; or claims to have misunderstood the collector's instructions to remain at a collection site, among others.

Here's a list of Part 40 refusals and the DOT regulation instructions for handling them:

Event	Decision Maker	DOT Instructions
Fail to appear at a urine collection site when directed to report	**Employer / DER *** [after review of the collector documentation]	If the employee did not get to the site or spent too much time getting there, it is a refusal.
Fail to remain at the urine collection site	**Employer / DER *** [after review of the collector documentation]	If the collector reports that the employee left the collection site before the testing process was complete, it is a refusal.
Fail to provide a urine specimen	**Employer / DER *** [after review of the collector documentation]	If the collector reports that the employee left the collection site before providing a required specimen, it is a refusal.
Fail to permit a monitored or observed urine collection	**Employer / DER *** [after review of the collector documentation]	If the employer ordered an observed collection or if the collector required the collection to be monitored or observed, it is a refusal if the employee does not permit it to occur.
Fail to provide a sufficient amount of urine	**MRO**	If the MRO finds that there was no medical reason for the employee to provide an insufficient amount of urine, it is a refusal.
Fail or decline to take an additional drug test the employer or collector has directed	**Employer / DER *** [after review of the collector documentation]	If the employer or collector directs the employee to take an additional test, as required or permitted by the DOT, and the employee does not, it is a refusal.

Event	Decision Maker	DOT Instructions
Fail to undergo a medical examination or evaluation the MRO or employer has directed	**MRO**	If the employee does not go in for a medical evaluation or does not permit it to occur, it is a refusal.
Fail to cooperate with any part of the urine collection process	**Employer / DER *** [after review of the collector documentation]	Some examples of failure to cooperate are when the employee: 1. Refuses to empty pockets when directed; 2. Behaves in a confrontational manner that disrupts the collection process; 3. Refuses to remove hat, coat, gloves, coveralls when directed; or 4. Fails to wash hands when directed.
For an observed collection, fail to follow the instructions to raise and lower clothing and turn around	**Employer / DER *** [after review of the collector documentation]	If the employee does not follow these instructions so that the observer can check for prosthetic or other devices that could be used to interfere with the collection process, it is a refusal.
Possess or wear a prosthetic or other device that could be used to interfere with the collection process	**Employer / DER *** [after review of the collector documentation]	If the employee is found to have or wear a prosthetic or other device designed to carry clean urine or a urine substitute, it is a refusal.
Admit to the collector to having adulterated or substituted the specimen	**Employer / DER *** [after review of the collector documentation]	If the employee, during the collection process, admits to having tampered with his or her specimen, it is a refusal
Adulterate or substitute a urine specimen	**MRO**	If the laboratory reports a confirmed adulterated or substituted specimen to the MRO and the MRO determines there is no medical reason for the result, it is a refusal.

Event	Decision Maker	DOT Instructions
Admit to the MRO to having adulterated or substituted the specimen	**MRO**	If the employee, during a medical review, admits to having tampered with his or her specimen, it is a refusal.
Fail to appear for an alcohol test when directed to report	**Employer / DER *** [after review of the STT or BAT documentation]	If the employee did not get to the alcohol test site or spent too much time getting there, it is a refusal.
Fail to remain at the alcohol test site	**Employer / DER *** [after review of the STT or BAT documentation]	If the STT or BAT reports that the employee left the collection site before the testing process was complete, it is a refusal.
Fail to provide an adequate amount of saliva or breath	**Employer / DER *** [after review of the STT or BAT documentation]	If the STT or BAT reports that the employee left the alcohol testing site before providing a required amount of saliva or breath, it is a refusal.
Fail to provide a sufficient breath specimen	**Evaluating Physician**	If the evaluating physician finds that there was no medical reason for the employee to provide an insufficient amount of breath, it is a refusal.
Fail to undergo a medical examination or evaluation as the employer has directed as part of the insufficient breath procedures	**Employer / DER**	If the employee does not go in for a medical evaluation or does not permit it to occur, it is a refusal.

Event	Decision Maker	DOT Instructions
Fail to sign the certification statement at Step 2 of the ATF	**Employer / DER *** [after review of the STT or BAT documentation]	If the employee does not agree to have a test accomplished by signing Step 2 of the ATF, it is a refusal.
Fail to cooperate with any part of the alcohol testing process	**Employer / DER *** [after review of the STT or BAT documentation]	One example of failing to cooperate is when the employee behaves in a confrontational manner that disrupts the alcohol testing process.

IMPORTANT NOTE: When a collector for a drug test, or an STT or BAT for an alcohol test, reports a refusal event to the DER, the ***EMPLOYEE MUST IMMEDIATELY BE REMOVED FROM SAFETY-SENSITIVE DUTIES***, and after that you [or the DER] must verify if the employee actually refused the test based upon the documentation provided and DOT's instructions. When you [or the DER] determine that there is a refusal, do not return the employee to safety-sensitive duties until the SAP return-to-duty process is successfully completed.

In extremely rare cases for which you [or the DER] determine there is not a refusal, you [or the DER] must document your decision and your solid reasoning for it. You must maintain this documentation for a DOT Agency or USCG representative in the event of an inquiry or inspection.

Remember, your decision could be overturned by the DOT, a DOT Agency, or the USCG. So, as a safeguard to ensure that you make the correct determination, you ought to consult with your MRO on collection site refusals – the MRO is, after all, the "Gatekeeper" for the drug testing process.

NOTE: An MRO's refusal determination is final and not subject to your review. Also, an evaluating physician's refusal determination for an employee's insufficient breath is final and not subject to your review.

Section VIII. Record Keeping and Data Collection Requirements

What drug and alcohol records do I need to keep?

You have to maintain comprehensive records related to your program. That way, you can fully account for your program when you are inspected or audited by DOT Agencies or USCG. In addition, you will have the records that you might have to produce for court cases and arbitration hearings. Your service agents can maintain these documents for you. DOT published the "Employer Record Keeping Requirements for Drug and Alcohol Testing Information," and it is available on our website. The document goes into far more detail than we can give you here.

You can find the employer records keeping document on our website at:
http://www.dot.gov/ost/dapc/testingpubs/Recordkeeping Requirements.pdf

The minimum record keeping requirements are highlighted in this chart:

Schedule	Type of Records
Five Years	Records of alcohol test results indicating an alcohol concentration of 0.02 or greater; Records of verified positive drug test results; Documentation of refusals to take required alcohol and drug tests (including substituted or adulterated drug test results); Annual MIS Report; SAP reports; and All follow-up tests and schedules for follow-up tests. [**Aviation employers** must keep commercial pilot positive, negative, and refusal records for 5 years because of the Pilot Record Improvement Act and must keep employee dispute records.] [**Pipeline operators** and motor carrier companies must maintain EBT calibration records for 5 years.]

Schedule	Type of Records
Three Years	Information obtained from previous employers under §40.25 concerning drug and alcohol test results of employees. [**Pipeline operators** must keep supervisor and employee drug training records; and records related to the drug collection process.]
Two Years	Records of the inspection, maintenance, and calibration of EBTs; and Records related to the alcohol and drug collection process. These include, documents related to random selections, reasonable suspicion determinations, and post accident determinations; medical evaluations for insufficient amounts of urine and breath; and supervisor and employee education and training records. [**Motor carriers** must keep supervisor, employee, BAT, and STT education and training records for two years after the person ceases those specific functions.] [**Railroads** must keep records of negative and cancelled drug test results and alcohol test results with a concentration of less than 0.02 because of FRA regulations and must keep employee dispute records.] [**Pipeline operators** must keep supervisor and employer alcohol training records.]
One Year	Records of negative and cancelled drug test results and alcohol test results with a concentration of less than 0.02. [**Railroads** must keep these records for two years.]

Where and how should I keep my drug and alcohol testing records?

You should keep testing records in locations with controlled access (for example, in locked cabinets and in rooms requiring access by sign in, lock and key or security code). Only employees with an official "need to know" should have access to these records and be allowed in these areas. You can keep the records at your place of business or a service agent may keep them for you.

MROs must keep their medical review records, their laboratory reports, and CCF copies they receive at their own business places.

If you store your records electronically, you must make sure they are easily accessible, legible, formatted, and stored in an organized and reviewable manner. If electronic records do not meet these criteria, at the request of DOT agency or USCG representatives, you must convert them to printed documentation in a rapid and readily auditable manner.

You must make them available at your principal place of business when they are requested by the DOT, a DOT Agency, or USCG. For example, if you are a motor carrier and an FMCSA investigator requests your records, you must provide them within two business days.

For most DOT Agencies and USCG, you must keep original copies of CCFs and ATFs even if you store them electronically.

If your records are maintained by a service agent who goes out of business, you must request that they send the records to another service agent of your choosing or to you – and they must do so.

What are the requirements for sending annual data reports to DOT?

You might have to send data reports, but it will depend upon on which regulations you are to follow. The following chart contains the DOT Agency and USCG specific instructions on submitting the Management Information System drug and alcohol statistical testing data:

DOT Agency	MIS Submission Requirements
FMCSA	Employers must submit upon request from FMCSA. [49 CFR Part 382.403]
FAA	Each part 121 certificate holder and each employer with 50 or more safety-sensitive employees must submit each calendar year; and Employers with 49 or fewer safety-sensitive employees must submit upon request from FAA. [14 CFR Part 120.119] [14 CFR Part 120.219(b)]
FRA	Employers with 400,000 or more annual employee hours must submit each calendar year. [49 CFR Part 219.800]

DOT Agency	MIS Submission Requirements
FTA	Employers must submit upon request from FTA. [49 CFR Part 655.72]
PHMSA	Employers with more than 50 covered employees must submit each calendar year; and Employers with 50 or fewer covered employees must submit upon request from PHMSA. [49 CFR Part 199.119 &.229]
USCG	Employers must submit each calendar year; and C/TPAs may report on behalf of their member clients as an aggregate report. [46 CFR Part 16.500]

The DOT Agencies and USCG would like you to submit the MIS data via the Internet, if you can. That way you don't have to submit a hard copy. Plus, the Internet entry helps you get the math correct.

A best practice is to complete an MIS form even if you don't have to send one in. It tells you a lot about your testing program, and you can use it during DOT Agency & USCG inspections and audits.

You may use a service agent to help you complete and submit the MIS form, but you must ensure its accuracy.

If you have to submit an MIS report to the DOT Agency or USCG, you must have it in by March 15th. ***For example: If you were required to submit your company's 2007 drug and alcohol MIS testing data, you would have until March 15, 2008 to get it in.***

You can find the MIS form, instructions, and Internet links for submitting it at: http://www.dot.gov/ost/dapc/mis.html.

If you are covered under the FTA rules, you must complete and maintain MIS reports every year even if you don't have to send it in.

What should I do with the semi-annual statistical summaries I receive from my laboratory or my C/TPA?

You should expect to get reports directly from laboratories twice a year about the testing they do for you. If you are served by a C/TPA, your summary may be going to them first. If so, you need to make sure the C/TPA forwards it on to you. The laboratory should not be sending C/TPAs a "lump summary" for all the employers served by the C/TPA, but should be sending employer-specific reports. This is the report you should receive. Note that if you conduct fewer than five tests during the report period, you will not receive a summary.

These laboratory reports are valuable to you. They will provide you with a window into your drug testing program. You can compare them to your own statistical reporting, billing records from collectors and MROs, and CCFs and results reports you receive. Let these laboratory reports work for you.

This chart shows some examples:

Example	Action
Your laboratory report shows 480 random tests but your random selection records show that you made 500 selections.	Find the reason for the discrepancy and correct any problems to ensure you are in compliance with the required random testing rate.
Your laboratory report shows that you had 100 tests but you payment records indicate that your collector billed you for 110 tests.	Check with your collection site to see if they billed you correctly.
Your laboratory report shows one test positive for PCP, but your MRO did not report a verified PCP positive test result for any employee.	1. Check with your MRO to make sure the PCP test was not "downgraded" to negative – that would have been a mistake. 2. Check with the MRO to see if the PCP test result was cancelled by the MRO because of a "fatal flaw" or because a "correctable flaw" was not corrected.

Example	Action
Your laboratory report shows 25 cancelled tests because of "fatal flaws" but you were not made aware of any.	1. Check with the MRO to find out the reasons for the cancellations. 2. If they are due to collector errors, you must ensure that the collector had "error correction training." 3. Consider changing collection services.
Your laboratory report shows 10 negative specimens that were also dilute. **1. Your policy is to have employees with negative dilute results return to collection sites for another collection; and** **2. For low level negative dilutes, the DOT requires immediate recollection under direct observation.** **But neither of these recollections occurred.**	1. Reiterate with your DER and your MRO what your policy is for negative dilute specimens. 2. Because DOT requires employees with specific low level negative-dilutes to be recollected under direct observation, check with the MRO to see if any results were in the this range. If the results were in this range and the employees were not recollected under direct observation, you must order the recollections immediately.

Section IX. Program Compliance and Inspections / Audits

Who must make sure my program meets DOT requirements?

Keep in mind that no matter how you decide to manage your DOT required drug and alcohol program, as the employer, you are responsible for compliance. If you use a service agent – for example, a collector, BAT, MRO, or SAP – and the service agent fails to comply with DOT rules, DOT can take action against you. Yes, you can be fined or you can lose your Federal funding. You must be in compliance with Part 40 as well as the appropriate DOT Agency or USCG regulation.

What can happen to service agents who don't comply with DOT rules?

If you think a service agent providing services to you isn't complying with DOT rules, you can fire that service agent and find someone else who does comply. DOT rules also allow DOT to prohibit a service agent that makes very serious errors from working for DOT employers. This is known as the "Public Interest Exclusion," or "PIE," process. And in some cases, the service agent can be fined for non-compliance.

How do I report a service agent who is not complying with Part 40?

Report the service agent to the program manager of the DOT agency that regulates you and provide vital information. For example, if you wish to report a collection site for non-compliance, be prepared to provide the name and phone number of the collector, the name and location of the collection site, and what you think they did wrong.

For a list of DOT Agency and USCG program managers, see Appendix F or check out this website: http://www.dot.gov/ost/dapc/oamanagers.html

What can I expect during a DOT Agency or USCG audit, inspection, investigation, or compliance review?

The purpose of an audit, inspection, investigation or compliance review is to verify that you are complying with Part 40 and appropriate DOT Agency and USCG regulations, and applicable Federal laws. DOT program evaluators also determine whether your key personnel and service agents understand the program and implement your program correctly. In order to identify your program's strengths and weaknesses, program evaluators will determine:

- If your program is in compliance with the appropriate DOT testing regulations;
- Whether or not you are appropriately following your DOT company policies;
- How correctly your service agents and program personnel carry-out their responsibilities;
- Whether or not your employees and supervisors receive appropriate education and training;
- Whether employees were removed from performance of duty following violations; and
- Whether or not you and your service agents have maintained adequate documentation.

Check out Appendix G. It highlights most – but not all – the records the DOT Agencies and USCG will likely request and review.

But, I have more questions?

ODAPC is available to help answer anyone's questions regarding Part 40. You can visit our website at: http://www.dot.gov/ost/dapc to "Ask ODAPC" a question or to view frequently asked questions, official interpretations of the regulations, and regulatory guidelines. Also, a very comprehensive "Employer Page" is on our website at: http://www.dot.gov/ost/dapc/employer.html .

You can find more specific information about the DOT Agency and USCG requirements at: http://www.dot.gov/ost/dapc/testingpubs/Program Facts.doc ; and their manager contact information is at Appendix F and at: http://www.dot.gov/ost/dapc/oamanagers.html .

Appendix A *– Company DOT Testing Policy Requirements*

The DOT Agencies and USCG require employers to have written policies for their DOT testing programs. At a minimum, these policies must contain specific information required by the appropriate DOT Agency or USCG. Your policies must clearly delineate between the items and actions which are required by DOT and which are required by the company or employer. Here is a listing of DOT Agency and USCG requirements and where you can find them in the regulations.

DOT Agency	Policy Requirements
FMCSA	**49 CFR Part 382.601(b)** – A company's DOT policy must contain the following: 1. The identity of the person designated by the employer to answer driver questions about the materials. 2. The categories of drivers who are subject to the provisions of this part. 3. Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance. 4. Specific information concerning driver conduct that is prohibited by Part 382. 5. The circumstances under which a driver will be tested for alcohol and/or controlled substances under this part, including post-accident testing under §382.303(d). 6. The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by §382.303(d). 7. The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with Part 382. 8. An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences. 9. The consequences for drivers found to have violated subpart B of this part, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under Part 40, Subpart O. 10. The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04. 11. Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and or referral to management. **This FMCSA website has suggestions and a checklist for motor carrier policy development:** http://www.fmcsa.dot.gov/safety-security/safety-initiatives/drugs/chap03.htm

DOT Agency	Policy Requirements
FAA	**14 CFR Part 120** – Employers must have a policy on drug use in the workplace and an alcohol misuse policy. **120.115(b)(2)** **Policy on Drug Use in the Workplace** The employer's policy on drug use in the workplace shall include information regarding the consequences under the rule of: 1. Using drugs while performing safety-sensitive functions. 2. Receiving a verified positive drug test result. 3. Refusing to submit to a drug test required under the rule. **120.223(a)** **Alcohol Misuse Policy** The employer's policy on alcohol misuse must include a detailed discussion of at least the following: 1. The identity of the person designated by the employer to answer employee questions about the materials. 2. The categories of employees who are subject to the provisions of these alcohol testing requirements. 3. Sufficient information about the safety-sensitive functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance with these alcohol testing requirements. 4. Specific information concerning employee conduct that is prohibited by this chapter. 5. The circumstances under which a covered employee will be tested for alcohol under this subpart. 6. The procedures that will be used to test for the presence of alcohol, protect the employee and the integrity of the breath testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee. 7. The requirement that a covered employee submit to alcohol tests administered in accordance with this subpart. 8. An explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences. 9. The consequences for covered employees found to have violated the prohibitions in this chapter, including the requirement that the employee be removed immediately from performing safety-sensitive functions, and the process in 49 CFR Part 40, subpart O. 10. The consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04. 11. Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem; and available methods of evaluating and resolving problems associated with the misuse of alcohol; and intervening when an alcohol problem is suspected, including confrontation, referral to any available employee assistance program, and/or referral to management. **Optional provisions**. The materials supplied to covered employees may also include information on additional employer policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol level, that are based on the employer's authority independent of this subpart. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

DOT Agency	Policy Requirements
FRA [1 of 5 sections] 219.23	**219.23 Railroad policies.** Whenever a breath or body fluid test is required of an employee under this part, the railroad must provide clear and unequivocal written notice to the employee that the test is being required under FRA regulations. Use of the mandated DOT form for drug or alcohol testing satisfies these requirements. Whenever a breath or body fluid test is required of an employee under 219, the railroad must provide clear, unequivocal written notice of the basis or bases upon which the test is required (e.g., reasonable suspicion, violation of a specified operating/safety rule enumerated in subpart D of this part, random selection, follow-up, etc.). Completion of the DOT alcohol or drug testing form indicating the basis of the test (prior to providing a copy to the employee) satisfies this requirement. Use of the DOT form for non-Federal tests is prohibited. Use of approved forms for mandatory post-accident toxicological testing under subpart C of 219 provides the notifications required under this section with respect to such tests. Use of those forms for any other test is prohibited. Each railroad must provide educational materials that explain the requirements of 219, and the railroad's policies and procedures with respect to meeting those requirements. 1. The railroad must ensure that a copy of these materials is distributed to each covered employee prior to the start of alcohol testing under the railroad's alcohol misuse prevention program and to each person subsequently hired for or transferred to a covered position 2. Each railroad must provide written notice to representatives of employee organizations of the availability of this information. **Required content.** The materials to be made available to employees must include detailed discussion of at least the following: 1. The identity of the person designated by the railroad to answer employee questions about the materials. 2. The classes or crafts of employees who are subject to the provisions of this part. 3. Sufficient information about the safety-sensitive functions performed by those employees to make clear that the period of the work day the covered employee is required to be in compliance with this part is that period when the employee is on duty and is required to perform or is available to perform covered service. 4. Specific information concerning employee conduct that is prohibited under subpart B of this part. 5. In the case of a railroad utilizing the accident/incident and rule violation reasonable cause testing authority provided by this part, prior notice (which may be combined with the notice required by §§219.601(d)(1) and 219.607(d)(1)), to covered employees of the circumstances under which they will be subject to testing. 6. The circumstances under which a covered employee will be tested under this part. 7. The procedures that will be used to test for the presence of alcohol and controlled substances, protect the employee and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee. 8. The requirement that a covered employee submit to alcohol and drug tests administered in accordance with this part. 9. An explanation of what constitutes a refusal to submit to an alcohol or drug test and the attendant consequences. 10. The consequences for covered employees found to have violated Subpart B of this part, including the requirement that the employee be removed immediately from covered service, and the procedures under §219.104. 11. The consequences for covered employees found to have an alcohol concentration of .02 or greater but less than .04. 12. Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem (the employee's or a coworker's); and available methods of evaluating and resolving problems associated with the misuse of alcohol, including utilization of the procedures set forth in subpart E of this part and the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs. **Optional provisions.** The materials supplied to employees may also include information on additional railroad policies with respect to the use or possession of alcohol and drugs, including any consequences for an employee found to have a specific alcohol concentration, that are based on the railroad's authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

DOT Agency	Policy Requirements
FRA [2 of 5 sections] 219.401	**219.401 Requirement for policies.** Each railroad must adopt, publish and implement: 1. A policy designed to encourage and facilitate the identification of those covered employees who abuse alcohol or drugs as a part of a treatable condition and to ensure that such employees are provided the opportunity to obtain counseling or treatment before those problems manifest themselves in detected violations of 219 hereafter ("voluntary referral policy"); and 2. A policy designed to foster employee participation in preventing violations of this subpart and encourage co-worker participation in the direct enforcement of 219 hereafter, ("co-worker report policy"). A railroad may comply by adopting, publishing and implementing policies meeting the specific requirements of §§219.403 and 219.405 or by complying with §219.407. If a railroad complies with 219 by adopting, publishing and implementing policies consistent with §§219.403 and 219.405, the railroad must make such policies, and publications announcing such policies, available for inspection and copying by FRA. Nothing in this section may be construed to— 1. Require payment of compensation for any period an employee is out of service under a voluntary referral or co-worker report policy; 2. Require a railroad to adhere to a voluntary referral or co-worker report policy in a case where the referral or report is made for the purpose, or with the effect, of anticipating the imminent and probable detection of a rule violation by a supervising employee; or 3. Limit the discretion of a railroad to dismiss or otherwise discipline an employee for specific rule violations or criminal offenses, except as specifically provided by this subpart.

DOT Agency	Policy Requirements
FRA [3 of 5 sections] 219.403	**219.403 Voluntary referral policy.** This section prescribes minimum standards for voluntary referral policies. Nothing in this section restricts a railroad from adopting, publishing and implementing a voluntary referral policy that affords more favorable conditions to employees troubled by alcohol or drug abuse problems, consistent with the railroad's responsibility to prevent violations of §§219.101 and 219.102. A voluntary referral policy must include the following provisions: 1. A covered employee who is affected by an alcohol or drug use problem may maintain an employment relationship with the railroad if, before the employee is charged with conduct deemed by the railroad sufficient to warrant dismissal, the employee seeks assistance through the railroad for the employee's alcohol or drug use problem or is referred for such assistance by another employee or by a representative of the employee's collective bargaining unit. The railroad must specify whether, and under what circumstances, its policy provides for the acceptance of referrals from other sources, including (at the option of the railroad) supervisory employees. 2. Except as may be provided under the optional provisions (below), the railroad treats the referral and subsequent handling, including counseling and treatment, as confidential. 3. The railroad will, to the extent necessary for treatment and rehabilitation, grant the employee a leave of absence from the railroad for the period necessary to complete primary treatment and establish control over the employee's alcohol or drug problem. The policy must allow a leave of absence of not less than 45 days, if necessary for the purpose of meeting initial treatment needs. 4. Except as may be provided under the optional provisions (below), the employee will be returned to service on the recommendation of the substance abuse professional. Approval to return to service may not be unreasonably withheld. 5. With respect to a certified locomotive engineer or a candidate for certification, the railroad must meet the requirements of §240.119(e). **Optional provisions.** A voluntary referral policy may include any of the following provisions, at the option of the railroad: 1. The policy may provide that the rule of confidentiality is waived if— a. The employee at any time refuses to cooperate in a recommended course of counseling or treatment; and/or b. The employee is later determined, after investigation, to have been involved in an alcohol or drug-related disciplinary offense growing out of subsequent conduct. 2. The policy may require successful completion of a return-to-service medical examination as a further condition on reinstatement in covered service. 3. The policy may provide that it does not apply to an employee who has previously been assisted by the railroad under a policy or program substantially consistent with this section or who has previously elected to waive investigation under §219.405 (co-worker report policy). 4. The policy may provide that, in order to invoke its benefits, the employee must report to the contact designated by the railroad either: a. During non-duty hours (i.e., at a time when the employee is off duty); or b. While unimpaired and otherwise in compliance with the railroad's alcohol and drug rules consistent with this subpart.

DOT Agency	Policy Requirements
FRA [4 of 5 sections] 219.405	**219.405 Co-worker report policy.** This section prescribes minimum standards for co-worker report policies. Nothing in this section restricts a railroad from adopting, publishing and implementing a policy that affords more favorable conditions to employees troubled by alcohol or drug abuse problems, consistent with the railroad's responsibility to prevent violations of §§219.101 and 219.102. ***Employment relationship.*** A co-worker report policy must provide that a covered employee may maintain an employment relationship with the railroad following an alleged first offense under this part or the railroad's alcohol and drug rules, subject to the conditions and procedures contained in this section. ***General conditions and procedures***. 1. The alleged violation must come to the attention of the railroad as a result of a report by a co-worker that the employee was apparently unsafe to work with or was, or appeared to be, in violation of 219 or the railroad's alcohol and drug rules. 2. If the railroad representative determines that the employee is in violation, the railroad may immediately remove the employee from service in accordance with its existing policies and procedures. 3. The employee must elect to waive investigation on the rule charge and must contact the substance abuse professional within a reasonable period specified by the policy. 4. The substance abuse professional must schedule necessary interviews with the employee and complete an evaluation within 10 calendar days of the date on which the employee contacts the professional with a request for evaluation under the policy, unless it becomes necessary to refer the employee for further evaluation. In each case, all necessary evaluations must be completed within 20 days of the date on which the employee contacts the professional. *When treatment is required*. If the substance abuse professional determines that the employee is affected by psychological or chemical dependence on alcohol or a drug or by another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation, the following conditions and procedures apply: 1. The railroad must, to the extent necessary for treatment and rehabilitation, grant the employee a leave of absence from the railroad for the period necessary to complete primary treatment and establish control over the employee's alcohol or drug problem. The policy must allow a leave of absence of not less than 45 days, if necessary for the purpose of meeting initial treatment needs. 2. The employee must agree to undertake and successfully complete a course of treatment deemed acceptable by the substance abuse professional. 3. The railroad must promptly return the employee to service, on recommendation of the substance abuse professional, when the employee has established control over the substance abuse problem. Return to service may also be conditioned on successful completion of a return-to-service medical examination. Approval to return to service may not be unreasonably withheld. 4. Following return to service, the employee, as a further condition on withholding of discipline, may, as necessary, be required to participate in a reasonable program of follow-up treatment for a period not to exceed 60 months from the date the employee was originally withdrawn from service. ***When treatment is not required***. If the substance abuse professional determines that the employee is not affected by an identifiable and treatable mental or physical disorder— 1. The railroad must return the employee to service within 5 days after completion of the evaluation. 2. During or following the out-of-service period, the railroad may require the employee to participate in a program of education and training concerning the effects of alcohol and drugs on occupational or transportation safety. ***Follow-up tests***. A railroad may conduct return-to-service and/or follow-up tests (as described in §219.104) of an employee who waives investigation and is determined to be ready to return to service under this section.

DOT Agency	Policy Requirements
FRA [5 of 5 sections] 219.407	**219.407 Alternate policies.** In lieu of a policy under §219.403 (voluntary referral) or §219.405 (co-worker report), or both, a railroad may adopt, publish and implement, with respect to a particular class or craft of covered employees, an alternate policy or policies having as their purpose the prevention of alcohol or drug use in railroad operations, if such policy or policies have the written concurrence of the recognized representatives of such employees. The concurrence of recognized employee representatives in an alternate policy may be evidenced by a collective bargaining agreement or any other document describing the class or craft of employees to which the alternate policy applies. The agreement or other document must make express reference to this part and to the intention of the railroad and employee representatives that the alternate policy applies in lieu of the policy required by §219.403, §219.405, or both. The railroad must file the agreement or other document described in paragraph b with the Associate Administrator for Safety, FRA. If the alternate policy is amended or revoked, the railroad must file a notice of such amendment or revocation at least 30 days prior to the effective date of such action. This section does not excuse a railroad from adopting, publishing and implementing the policies required by §§219.403 and 219.405 with respect to any group of covered employees not within the coverage of an appropriate alternate policy.

DOT Agency	Policy Requirements
FTA	**49 CFR Part 655.15** – The local governing board of the employer or operator shall adopt an anti-drug and alcohol misuse policy statement which are made available to employees and contain the following: 1. The identity of the person, office, branch and/or position designated by the employer to answer employee questions about the employer's anti-drug use and alcohol misuse programs. 2. The categories of employees who are subject to the provisions of Part 655. 3. Specific information concerning the behavior and conduct prohibited by Part 655. 4. The specific circumstances under which a covered employee will be tested for prohibited drugs or alcohol misuse under Part 655. 5. The procedures that will be used to test for the presence of illegal drugs or alcohol misuse, protect the employee and the integrity of the drug and alcohol testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correct covered employee. 6. The requirement that a covered employee submit to drug and alcohol testing administered in accordance with Part 655. 7. A description of the kind of behavior that constitutes a refusal to take a drug or alcohol test, and a statement that such a refusal constitutes a violation of the employer's policy. 8. The consequences for a covered employee who has a verified positive drug or a confirmed alcohol test result with an alcohol concentration of 0.04 or greater, or who refuses to submit to a test under this part, including the mandatory requirements that the covered employee be removed immediately from his or her safety-sensitive function and be evaluated by a substance abuse professional, as required by 49 CFR Part 40. 9. The consequences, as set forth in §655.35 of subpart D, for a covered employee who is found to have an alcohol concentration of 0.02 or greater but less than 0.04. 10. The re-collection requirements, if any, for dilute specimens. **This FTA website shows model transit policies:** http://transit-safety.volpe.dot.gov/publications/safety/BestPractices/BestPractices_Policies.pdf

DOT Agency	Policy Requirements
PHMSA	**49 CFR Part 199** – Operators must have an anti-drug plan and an alcohol misuse policy which are made available to employees and contain the following: **199.101 Anti-Drug Plan** 1. Methods and procedures for compliance with all the requirements of Part 199, including the employee assistance program. 2. The name and address of each laboratory that analyzes the specimens collected for drug testing. 3. The name and address of the operator's Medical Review Officer, and Substance Abuse Professional. 4. Procedures for notifying employees of the coverage and provisions of the plan. **199.239 Misuse of Alcohol Policy** 1. The identity of the person designated by the operator to answer covered employee questions about the materials. 2. The categories of employees who are subject to the alcohol testing provisions of Part 199. 3. Sufficient information about the covered functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance with the alcohol testing provisions of Part 199. 4. Specific information concerning covered employee conduct that is prohibited by this subpart. 5. The circumstances under which a covered employee will be tested for alcohol under the alcohol testing provisions of Part 199. 6. The procedures that will be used to test for the presence of alcohol, protect the covered employee and the integrity of the breath testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee. 7. The requirement that a covered employee submit to alcohol tests administered in accordance with the alcohol testing provisions of Part 199. 8. An explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences. 9. The consequences for covered employees found to have violated the prohibitions under this subpart, including the requirement that the employee be removed immediately from covered functions, and the procedures under §199.243. 10. The consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04. 11. Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem (the employee's or a coworker's); and including intervening evaluating and resolving problems associated with the misuse of alcohol including intervening when an alcohol problem is suspected, confrontation, referral to any available EAP, and/or referral to management.

DOT Agency	Policy Requirements
USCG	**46 CFR Part 16** – EAP Education Program 16.401(a) – The employer must display and distribute the employer's policy regarding drug and alcohol use in the workplace. **Marine Employers Drug Testing Guidance:** Each marine employer is recommended to have a written drug and alcohol testing policy. This policy details a company's position regarding their expectations of their crewmembers with regard to drug and alcohol testing and actions to be taken as a result of drug testing results. A. At a minimum, a policy should cover the following topics: 1. That all company personnel, full-time, part-time, year round, seasonal, or contracted, that meet the definition of a crewmember, are subject to U.S. Coast Guard Drug and Alcohol Testing, in accordance with 46 CFR Parts 4 and 16. 2. That any crewmember who tests positive or has a drug test violation, will be immediately removed from their safety-sensitive duties. 3. Dismissal policy. Nothing in the regulations requires the marine employer to fire a crewmember that tests positive or refuses to test, only that they be removed from their safety-sensitive duties. It is up to each individual employer to decide if a positive test or refusal will result in termination. If so, it needs to be stated in the company policy. It is recommended that phrases that are subjective or open to different interpretations be removed from the policy. 4. A referral to a SAP that is used by a marine employer for all drug test violations. The referral shall include the name and contact information for the SAP. 5. Policy regarding alcohol use and possession and the consequences for being found aboard a commercial vessel with a blood alcohol concentration greater than or equal to 0.040%. B. Many marine employers incorporate their position regarding the possession of drug paraphernalia, illegal drugs, and use of prescription drugs or over the counter medications in their policy. Additionally, any other employment actions the company plans to take should be spelled out in the policy. C. It is recommended that each crewmember sign a form stating that they have read and understood the company's drug and alcohol testing policy. This signed acknowledgement should remain on file for as long as the company employs the individual. **Note:** It is highly recommended that marine employers have a written policy. The size of the marine employer has no bearing on the recommendation for a written policy. **This website offers Guidance to Marine Employers:** http://www.dot.gov/ost/dapc/testingpubs/Marine_Employers_Drug_Testing_Guide_2005.pdf

Appendix B *– Collection Site Security and Integrity*

DOT's 10 Steps to Collection Site Security and Integrity

Office of Drug and Alcohol Policy and Compliance
U.S. Department of Transportation

1. Pay careful attention to employees throughout the collection process.

2. Ensure that there is no unauthorized access into the collection areas and that undetected access (e.g., through a door not in view) is not possible.

3. Make sure that employees show proper picture ID.

4. Make sure employees empty pockets; remove outer garments (e.g., coveralls, jacket, coat, hat); leave briefcases, purses, and bags behind; and wash their hands.

5. Maintain personal control of the specimen and CCF at all times during the collection.

6. Secure any water sources or otherwise make them unavailable to employees (e.g., turn off water inlet, tape handles to prevent opening faucets, secure tank lids).

7. Ensure that the water in the toilet and tank (if applicable) has bluing (coloring) agent in it. Tape or otherwise secure shut any movable toilet tank top, or put bluing in the tank.

8. Ensure that no soap, disinfectants, cleaning agents, or other possible adulterants are present.

9. Inspect the site to ensure that no foreign or unauthorized substances are present.

10. Secure areas and items (e.g., ledges, trash receptacles, paper towel holders, under-sink areas, ceiling tiles) that appear suitable for concealing contaminants.

Appendix C *– Selecting Service Agents*

When selecting service agents, you have to weigh some very important factors.

- Can the service agent ensure their compliance with DOT regulations and guidelines?
- Do they have employer references about the quality of their work?
- Do they provide services during the times and on days you need them?
- Do their personnel qualifications and training meet DOT requirements?
- Have their services been shown to pass DOT inspections and audits?
- Are they cost competitive?
- If you need full services – for example, you want random selections, collections, alcohol testing, laboratory testing, and MRO work – do they offer a total package plan? On the other hand, if you need only one service – for example, you need only collections – do they offer single services?

The following is a list of the most common service agents and some starting points to help you select them:

URINE SPECIMEN COLLECTORS, BATS, AND STTS

There are a number of things to look for when selecting collectors, BATs, and STTs.

1. Ensure they offer the services you want. For example, do they offer both urine collections and alcohol testing? Will they come onto your worksite if you want them to?
2. Make sure they are open for business at the times you need them to be. Are they open during the times your employees are on duty and may need to have tests? Will remain open if their closing time coincides with an employee presenting an insufficient amount of urine.
3. Make sure they show you training documentation for their personnel.
4. Have them explain their procedures for notifying you or the DER of test results – especially refusals, positive alcohol tests, and problems with employees.
5. Check-out their collection sites for being secure and having site integrity [See Appendix B and video].
6. Determine if their facilities are conveniently located, offer parking, and are professional looking.
7. Find out if they have the correct CCFs, ATFs, collection kits, and alcohol test equipment.
8. Ask if they have a fax machine and intend to use it immediately after each DOT collection and alcohol test to appropriately distribute the paperwork.
9. Have them explain their procedures for collecting specimens under direct observation and whether they have same gender observers readily available.
10. Ask if they have DOT's collection guidelines, Part 40, and the DOT poster for collection site security and integrity on the premises.
11. See if they have references from other employers and records of DOT inspections and audits.

A best practice is to visit collection facilities from time to time when your employees are there for tests to see for yourself how the process is going. You may discover that the site does not ensure the integrity of the process or you may find if out they do. You should also talk with your MRO to see how often tests are cancelled because of collector errors. If collection companies are not doing a good job for you, look elsewhere for the service. Don't risk being out of compliance with DOT regulations.

DHHS-Certified Drug Testing Laboratories

All DOT drug testing must be done at laboratories certified by the Department of Health and Human Services. So it is your job to contact a laboratory to arrange testing. The HHS publishes monthly a listing of certified laboratories.

You can find them at this webpage:
http://workplace.samhsa.gov/DrugTesting/Level_1_Pages/CertifiedLabs.html

If you are working with a C/TPA, it is very likely that the C/TPA will arrange laboratory services for you and will come up with a cost for you. Whether you select the laboratory yourself or have your C/TPA do it, you will find that laboratories offer a variety of price packages. The pricing packages are generally considered bundled pricing or unbundled pricing.

Bundled pricing means one price is offered per specimen no matter what. Here it gets a little complicated. There are screening tests, confirmation tests [if screening tests are positive], and tests to see if specimens are adulterated or substituted. There are also tests to see if methamphetamine positive results are because of legitimate reasons. So for bundled pricing, all these tests could be rolled up into a "one-price-fits-all" arrangement.

Unbundled pricing means that you pay as you go with a specimen. This "a la carte" pricing will cost you for each test the laboratory has to run. That's the nature of unbundled pricing.

So, you will want to comparison shop. You will also want to find out if the laboratory will routinely provide CCFs and collection kits to your collection sites. A laboratory's hours of operation could be important to you – some operate 24 hours a day, seven days a week. You will also want to check to see if they are responsive on critical reporting and discussion issues – your MRO may be the best source for this information.

Medical Review Officer (MRO)

The MRO is the "gatekeeper" for your drug testing program. So, choose yours wisely. You will want an MRO who has been certified by one of the major MRO certification organizations. This means the MRO met the credential requirements, was trained in MRO practices, and passed a difficult certification examination.

Two MRO certification organizations make lists of their certified MROs available on the Internet: Medical Review Officers Certification Counsel (MROCC) at: http://www.mrocc.com/index.htm and the American Association of Medical Review Officers (AAMRO) at: http://www.aamro.com/ .

Other resources could be the American Society of Addiction Medicine (ASAM) at: http://www.asam.org/ and the American College of Occupational and Environmental Medicine (ACOEM) at http://www.acoem.org/ . If you are working with a C/TPA, it is very likely that the C/TPA will arrange MRO services for you and will come up with a cost for you. If an MRO is part of a C/TPA, you must make certain the laboratory results go directly to the MRO and not to the C/TPA.

An MRO's hours of operation and whether they have other MROs ready to stand in during vacations and illness could be important to you. Also important is how often they provide direct supervision to their administrative staff who perform important work on negative results or who may facilitate contacting employees for medical reviews of non-negative results. You may also want to find out what training the MRO's staff has received. The MRO and staff do not have to be at the same location, but this may be important to you. If you have

Spanish speaking employees, you might think a bilingual MRO, or a bilingual person on the MRO's staff, would be a vital requirement.

So, you will want to comparison shop. And don't forget that like laboratories, sometimes MROs bundle their services and will charge you one price per result – no matter if it is negative or positive or a refusal. Others may offer unbundled pricing – for instance, you may be charged more for review of positive results than for review of negatives because the process is much more complicated.

Substance Abuse Professional (SAP)

You have to find qualified SAPs in order to provide a list of them to employees who violate drug and alcohol rules. Many of the same pointers we gave you for selecting your laboratory and MRO will be useful in selecting a SAP. One important factor to keep in mind is the SAP must be acceptable to you and will need to be readily accessible to your employees because their evaluation sessions must be in-person, face-to-face.

To help you find qualified SAPs, we have the SAP training organizations and national counseling associations on our website at: http://www.dot.gov/ost/dapc/testingpubs/SAPExamSources_200708_alpha.doc . They are excellent sources for finding qualified SAPs. Simple Internet searches are also useful for finding the larger SAP networks such as: American Substance Abuse Professionals, Inc., National Substance Abuse Professionals Network, and SAP Referral Services. If you are working with a C/TPA, it is very likely that the C/TPA will arrange SAP services for you.

Note: If you are covered under FAA or USCG regulations, make sure your SAP is knowledgeable about their special return-to-work requirements.

Consortium/Third Party Administrator (C/TPA)

When you turn to a C/TPA to operate your program for you, they are being entrusted with your program's compliance. You will want to ensure that they select the best possible collection sites, laboratories, MROs, and SAPs for you. You will also want to ensure that they know how to do the types of duties laid out in the appropriate DOT Agency or USCG regulations. You may also want to find out how much they know about your industry and your company needs.

Remember: If the C/TPA is not in compliance with the regulations, neither are you! Not only that, you will be held accountable for their non-compliance!

So if you have them do your random selections and they don't do them correctly, you have a serious problem. And, if you have them do your urine collections and the collection site does not have measures in place to ensure the integrity of the collection, you have a serious problem.

Figuratively speaking, C/TPAs stand in the shoes of the employer. Therefore, you must ensure they know what they are doing and that the services they offer not only fit your needs but follow Part 40 and the appropriate DOT Agency regulations. Tell them, "No short cuts, please!" You may also want your contract with them to read that they pay for any fines levied on you by a DOT Agency or USCG for their mistakes.

There are several items to look for when selecting a C/TPA to assist you in administering your program. For example:

1. Are they known to systematically review and evaluate the work of their service agents, such as collection sites and collectors?

2. How do they ensure that their service agents have the latest DOT regulations and guidance?
3. Do they maintain the training and qualification records of their service agents?
4. Which testing records will they maintain on your behalf?
5. If they conduct your random testing program, how often are the selections made?
6. Can they provide you with a random testing plan outlining how the program works?
7. Is their point of contact person available during times and days you need?
8. If you have a question about the regulations, will they have someone there to answer?
9. Do they offer to review your account with you on a monthly basis?
10. Are they willing to discuss concerns you may have with service agent performance?
11. Are they willing to conduct reviews of your program before you have a DOT inspection?
12. Following a DOT inspection, are they willing to take necessary corrective actions?
13. Are records they maintain for you retrievable in short order?
14. How willing are they to be held accountable for serious service agent errors?

There are several ways to find a C/TPA.

The USCG publishes "Drug and Alcohol Program Inspectors Drug Testing Service Agents (State by State Listing." This document provides a listing of service agents by state and a listing of C/TPAs that offer nationwide services. This document is available on the USCG website at:
http://homeport.uscg.mil/mycg/portal/ep/browse.do?channelId=-18374&channelPage=/
Just scroll down to "Drug and Alcohol Program" and select "Drug Testing Service Providers."

You can also check with some of the industry organizations and associations listed on our website's, "Employer Page" at: http://www.dot.gov/ost/dapc/employer.html. Associations such as the Substance Abuse Program Administrators Association (SAPAA) and the Drug and Alcohol Testing Industry Association (DATIA) can direct you to their member C/TPAs.

Last but certainly not least, another good source is to check with other transportation employers to see who they use. These employers should be able to tell you if they are satisfied with the services a particular C/TPA provides.

Appendix D *– Post Accident Testing Criteria*

DOT Agency	Regulation	Testing Criteria	Who Is Tested
FMCSA	49 CFR Part 382.303	1. There is a fatality; or 2. The driver is cited for a moving violation AND either: a) The vehicle is towed from the scene; or b) Someone is medically evacuated from the scene.	The surviving driver. [*FMCSA regulations do not call for testing of deceased drivers.*]
FAA	14 CFR Part 120.109(c) & 120.217(b)	An occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight and the time all such persons have disembarked, AND in which any person suffers death or serious injury or in which the aircraft receives substantial damage.	Any employee whose performance either contributed to or could not be discounted as a contributing factor to the accident.

DOT Agency	Regulation	Testing Criteria	Who Is Tested
FRA	49 CFR Part 219.201	Major Train Accident: A train accident involving: a) a fatality; or b) release of hazardous lading material; or c) damage to railroad property of $1M or more ***FRA's Post-Accident Testing Flow Chart*** *can be viewed at:* *http://www.fra.dot.gov/us/content/1790*	Major Train Accident: All train and engine employees (including deceased employees) and any other covered employee who had a role in the cause or severity of the accident.
		Impact Accident: An accident involving damage in excess of the reporting threshold and a) there is a reportable injury, or b) damage to railroad property of $150,000 or more	Impact Accident: Any covered employee who had a role in the cause or severity of the accident.
		Fatal Train Incident: Fatality on any on-duty railroad employee involved with the movement of on-track equipment.	Fatal Train Incident: The deceased employee and any covered employee who had a role in the cause or severity of the accident.
		Passenger Train Accident: An accident involving damage in excess of the reporting threshold and a reportable injury to any person.	Passenger Train Accident: Any covered employee who had a role in the cause or severity of the accident.
		Exclusion from Post Accident Testing: Collision between railroad on-track equipment and a motor vehicle or other highway conveyance at a rail/highway grade crossing. Accidents or incidents in which the cause and severity are wholly attributable to a natural cause or to vandalism or trespasser(s).	

DOT Agency	Regulation	Testing Criteria	Who Is Tested
FTA	49 CFR Part 655.44	<u>Fatal Accident:</u> Occurrence associated with the operation of a vehicle where an individual dies. <u>Non-Fatal Accident:</u> Occurrence associated with the operation of a vehicle where: a) an individual receives medical treatment away from the scene; or b) the rubber-tired vehicle is towed from the scene due to disabling damage; or c) the fixed-guideway vehicle or vessel is removed from operation.	<u>Fatal Accident:</u> Each surviving employee operating the mass transit vehicle at the time of the accident. Also, any other covered employee whose performance could have contributed to the accident. [*FTA testing is not required if the employee is covered under the FMCSA post-accident testing requirements of 382.303.*] <u>Non-Fatal Accident:</u> Each employee operating the mass transit vehicle *unless the employee's performance can be completely discounted as a contributing factor*. Also, any other covered employee whose performance could have contributed to the accident.
PHMSA	49 CFR Part 199.105 & 199.225	An incident reportable under Part 191 involving gas pipeline facilities or LNG facilities, or an accident reportable under Part 195 involving hazardous liquid pipeline facilities.	Each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident.

DOT Agency	Regulation	Testing Criteria	Who Is Tested
USCG	46 CFR Part 16.240	A Serious Marine Incident, is any reportable marine casualty [reference 46 CFR 4.03-1] that results, ***or***, in the marine employer's estimation **may result**, in any of the following: 1. One or more fatalities. 2. An injury to a crewmember, passenger, or other person which requires professional medical treatment beyond first aid, and, in the case of a person employed on board a vessel in commercial service, which renders the individual unfit to perform routine vessel duties. 3. Property damage in excess of $100,000. 4. Actual or constructive total loss of any inspected vessel. 5. Actual or constructive total loss of any self-propelled un-inspected vessel of 100 gross tons or more. 6. A discharge of oil into a navigable water in excess of 10,000 gallons. 7. A release of a Hazardous Substance greater than or equal to its reportable quantity into a navigable water, whether from a casualty or not.	Those personnel directly involved in a Serious Marine Incident.

Appendix E *– Prior Testing History Release of Information Format*

[Note: **FMCSA** for **CMV Drivers** – records for **3** years; **FAA** for **Pilots** – records for **5** years.]

Section I. To be completed by the new employer, signed by the employee, and transmitted to the previous employer:

Employee Printed or Typed Name: _____

Employee SS or ID Number: _____

I hereby authorize release of information from my Department of Transportation regulated drug and alcohol testing records by my previous employer, listed in *Section I-B*, to the employer listed in *Section I-A*. This release is in accordance with DOT Regulation 49 CFR Part 40, Section 40.25. I understand that information to be released in *Section II-A* by my previous employer, is limited to the following DOT-regulated testing items:

1. Alcohol tests with a result of 0.04 or higher;
2. Verified positive drug tests;
3. Refusals to be tested;
4. Other violations of DOT agency drug and alcohol testing regulations;
5. Information obtained from previous employers of a drug and alcohol rule violation;
6. Documentation, if any, of completion of the return-to-duty process following a rule violation.

Employee Signature: _____ Date: _____

I-A.
New Employer Name: _____

Address: _____

_____

Phone #: _____ Fax #: _____

Designated Employer Representative: _____

I-B.
Previous Employer Name: _____

Address: _____

_____

Phone #: _____

Designated Employer Representative (if known): _____

Section II. To be completed by the previous employer and transmitted by mail or fax to the new employer:

II-A. In the two years prior to the date of the employee's signature (in Section I), for DOT-regulated testing ~

1. Did the employee have alcohol tests with a result of 0.04 or higher? **YES ____ NO ____**
2. Did the employee have verified positive drug tests? **YES ____ NO ____**
3. Did the employee refuse to be tested? **YES ____ NO ____**
4. Did the employee have other violations of DOT agency drug and alcohol testing regulations? **YES ____ NO ____**
5. Did a previous employer report a drug and alcohol rule violation to you? **YES ____ NO ____**
6. If you answered "yes" to any of the above items, did the employee complete the return-to-duty process? **N/A ____ YES ____ NO ____**

NOTE: If you answered "yes" to item 5, you must provide the previous employer's report. If you answered "yes" to item 6, you must also transmit the appropriate return-to-duty documentation (e.g., SAP report(s), follow-up testing record).

II-B.
Name of person providing information in *Section II-A*: _____

Title: _____

Phone #: _____

Date: _____

Appendix F *– DOT & USCG Drug and Alcohol Program Manager Contact Information*

The following chart lists each DOT Agency and USCG drug and alcohol program's contact information:

DOT Agency	Program Manager Information	Drug and Alcohol Testing Regulations
Federal Motor Carrier Safety Administration (FMCSA)	Enforcement & Compliance Office Room W63-310 1200 New Jersey Avenue, SE Washington DC 20590 Phone: 202-366-2096 Fax: 202-366-7908	For motor carriers and commercial driver's license holders (CDL) 49 CFR Part 382
Federal Aviation Administration (FAA)	Drug Abatement Division Room 803 (AAM-800) 800 Independence Avenue, SW Washington DC 20591 Phone: 202-267-8442 Fax: 202-267-5200	For employers and employees in the aviation industry 14 CFR Part 120
Federal Railroad Administration (FRA)	Office of Safety 1200 New Jersey Avenue, SE W38-330 Washington DC 20590 Phone: 202-493-6313 Fax: 202-493-6230	For employers and employees working in the railroad industry 49 CFR Part 219
Federal Transit Administration (FTA)	Office of Safety & Security TPM-30, Room E46 1200 New Jersey Avenue, SE Washington DC 20590 Phone: 617-494-2395 Fax: 202-366-3394	For employers and employees working in the mass transit industry 49 CFR Part 655
Pipeline and Hazardous Materials Safety Administration (PHMSA)	Office of the Administrator PH-3, Room E24-302 1200 New Jersey Avenue, SE Washington DC 20590 Phone: 202-366-3844 Fax: 202-366-3666	For operators and employees working in the pipeline industry 49 CFR Part 199
United States Coast Guard (USCG)	Office of Investigation & Casualty Analysis (CG-545) Room 2404 2100 2nd Street SW Washington DC 20593-0001 Phone: 202-372-1033 Fax: 202-372-1907	For employer and employees operating commercial vessels 46 CFR Part 16 46 CFR Part 4

This information and manager email addresses are available at:
http://www.dot.gov/ost/dapc/oamanagers.html

Appendix G *– Audit/Inspection/Investigation/Compliance Records Review*

These represent most of the records a DOT Agency and USCG auditor, inspector, or investigator will usually request and review during a program review. Keep in mind, that DOT Agency and USCG regulations may have additional and more specific record review requirements.

POLICIES, PLANS, AND REPORTS

- Alcohol and drug testing policies and instructions for implementing your program.
- Previous two MIS annual reports either submitted to DOT, or prepared and retained.
- Copies of written consent forms you sent to obtain 40.25 drug and alcohol information from previous employers, and the responses received from those employers.
- Copies of written consent forms you received from prospective employers for 40.25 information, and documentation of your responses.
- Semi-annual statistical summary reports from laboratories.
- Records of blind specimens sent to laboratories for the previous two years.
- List of all employees hired or transferred into safety-sensitive service for the past two years, including documentation of previous employer records check.
- List of all employees with a non-negative test result in the last five years.

EMPLOYEE AND SUPERVISOR TRAINING RECORDS

- Educational materials for employees.
- Documentation showing how education materials were made available to employees.
- List of supervisors responsible for making reasonable suspicion and reasonable cause determinations.
- Supervisory training lesson plans and course materials.
- Attendance lists for supervisors who received this training.
- Under FRA, supervisor post- accident training lesson plans, course materials, and attendance lists.

RANDOM TESTING RECORDS

- Information about the type of method used to select employees for testing.
- Names of all employees in the random testing pool for each selection period that the DOT Agency or USCG will review.
- Names of all employees selected for testing.
- Names of all employees actually tested.
- CCFs and ATFs showing employees were tested within the selection period.
- For each selected employee not tested, documentation showing why the collection did not occur.
- Records of collections by location, by date (or day of the week), and by time of the day (or shift).
- Proof that testing occurred throughout all shifts and all workdays, in other words – testing was unpredictable.
- For railroads, your approved Drug and Alcohol Random Testing Plan.

Drug Testing Custody and Control Forms for All DOT Tests

- Pre-employment.
- Random.
- Reasonable suspicion, including supervisor justification documentation.
- Reasonable cause, under FAA, FRA, and PHMSA, including supervisor justification documentation.
- Post-accident, including documentation showing criteria were met.
- Return-to-duty.
- Follow-up.

MRO Records

- Laboratory confirmed results reports sent to MROs.
- MRO CCFs.
- MRO results reports sent to employers.
- MRO records of review of CCFs.
- MRO medical review notes and records.
- MRO downgrades.
- Split request records.
- Correctable and non-correctable flaw documentation.

Alcohol Testing Forms for All DOT Tests

- Pre-employment, if applicable.
- Random, under FMCSA, FAA, FRA, and FTA.
- Reasonable suspicion, including supervisor justification documentation.
- Reasonable cause under FRA, including supervisor justification documentation.
- Post-accident, including documentation showing criteria were met.
- Return-to-duty.
- Follow-up.
- Correctable and non-correctable flaw documentation.

Employee Return to Duty Records

- SAP Initial Evaluation reports.
- SAP Follow-up Evaluation reports, including follow-up testing plans.
- Employee "Return to Duty" and "Last Chance Agreements," when applicable.
- Return-to-duty and Follow-up testing compliance documentation.
- Lists of qualified SAPs that you give to those who violate the regulations.

Service Agent Documentation

- Lists of service agents and their contact information.
- Written agreements and contracts with service agents, if applicable.
- Credentials, training, and examination or proficiency documentation.

What Employers Need To Know About DOT Drug and Alcohol Testing
[Guidance and Best Practices]

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U.S. Department of Transportation
Office of the Secretary

Office of Drug and Alcohol Policy and Compliance

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Changes from previous version [August 31, 2009]:

Page 15: Updated HHS Laboratory List Link

Page 22: Updated HHS Blind Specimen Suppliers Link

Page 50: Updated HHS Laboratory List Link