

FMCSA Drug Testing Compliance: What Every DER Must Know

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1

Agenda

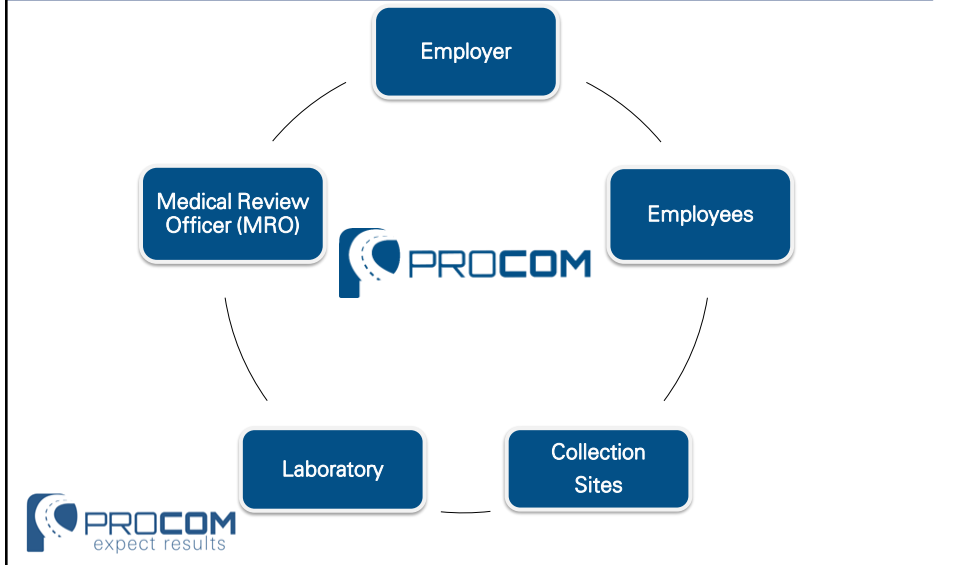
- DER Responsibilities
- Key Actions
 - Required Testing
 - FMCSA Clearinghouse
- Audits
 - Notice
 - Structure
 - Preparation
- Recordkeeping
- Q & A



2

2

Role of the DER



3

Danny DER

- Danny is new on the job and has never been a DER before
- He is overwhelmed by the number of regulations and acronyms
- He has a general distain for burdensome regulations and doesn't feel that compliance helps keep employee safe
- *Let's see how Danny navigates a few real-life work scenarios...*

4

Situation #1: Working with C/TPA

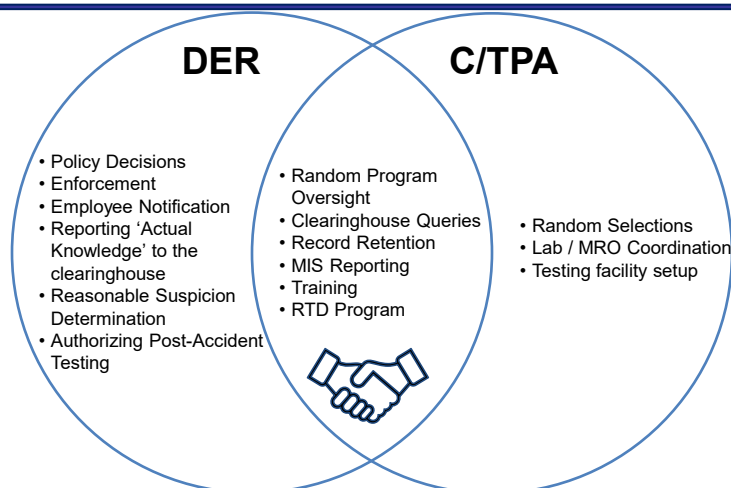
- Danny DER believes it's solely the C/TPA's job to maintain drug testing records
- Years into his tenure, his organization receives an audit notice
- When the auditor finds out he doesn't have any results on hand, he requests every drug test from the last two years
- Danny has to call his C/TPA and make an uncomfortable and time-consuming request
- The auditor waits while the C/TPA pulls each individual drug test and CCF (over 1,000!) from prior years and emails to the DER
 - This takes days, not hours, to accomplish
- While no fines were doled out, this created an unnecessarily tense and awkward audit, which lasted 2-3 times longer than it would have otherwise if Danny had appropriate testing files on record.



5

5

DER vs. TPA Responsibilities



The C/TPA is a **partner** but it's incumbent on the DER to maintain accurate Drug & Alcohol testing files and to ensure all regulations are followed

6

Situation #2: Confidentiality

- Danny receives a test result email from the MRO showing a positive drug test.
- He's unsure who else should see it — HR? Ownership? The driver's Supervisors?
- To "keep everyone in the loop," he forwards it widely across the firm
- Several employees are made uncomfortable by the email and make complaints about Danny.
- The mishandling of the email makes it difficult for the organization to fire the non-compliant teammate, even though that would normally be their practice.



7

7

Positive Results

The DER has several required activities upon notification of a positive result.

- Promptly inform employee of verified positive result
- Immediate removal of the employee from Safety-Sensitive duties
- Refer the employee to a Substance Abuse Professional to initiate the Return To Duty (RTD) Process
- Add result documentation and notes/correspondence to the Driver File
 - Maintain records for 5 years

The DER is the gatekeeper for sensitive testing information.

- Only share the result with those who have a legitimate need to know
 - Ex. HR personnel involved in employment consequences
 - Ex. Direct supervisor who is needed to help remove from safety-sensitive duty
- Positive Results aren't the only sensitive information that a DER will handle. Random selection lists, safety concern letters, etc. should all be handled with care and discretion.



8

8

Situation #3: Testing reasons

- Danny works in Washington state where state laws have recently made it more difficult to enact pre-employment testing programs.
- His organizational policy does not require pre-employment drug tests for employees
- Danny fails to recognize that Federal laws take precedent and does not perform DOT Pre-Employment testing on safety-sensitive new hires
- His C/TPA will not allow individuals into the consortium without a negative DOT Pre Employment result. This results in:
 - Increased liability from accidents these employees are involved in
 - Audit risk for both not completing required testing, and not enrolling promptly into random testing pools
 - The necessity to perform Pre-Employment testing on existing employees



9

9

FMCSA Testing Reasons

Pre-employment	Starting a new job / joining a new company or returning from extended leave
Random testing	FMCSA annual requirement of 50% drug selection rate and 10% alcohol selection rate
Post accident	Testing required, ideally immediately, upon qualifying incident. Test up to 8 hours (alcohol), 32 hours (drug).
Reasonable suspicion	Suspected violation of organizational policy.
Return to Duty / Follow Up	These testing reasons are only for individuals with prior drug/alcohol violations

These are both **required** and the only **authorized** FMCSA testing reasons



10

10

Situation #4: Post-accident

- One of Danny's drivers is cited in a crash that sends another motorist to the hospital.
- Danny isn't sure if this qualifies for a DOT post-accident test. He waits for guidance instead of acting.
- By the time he decides that this scenario – citation with injury – requires DOT post accident testing, the driver is unavailable and the window for testing has passed.
- Danny has to write up a memo for the driver file about why the testing didn't take place and take the blame for the lack of action.
- This misstep opens the door to increased liability, audit risk, and the potential for keeping an unsafe driver behind the wheel.

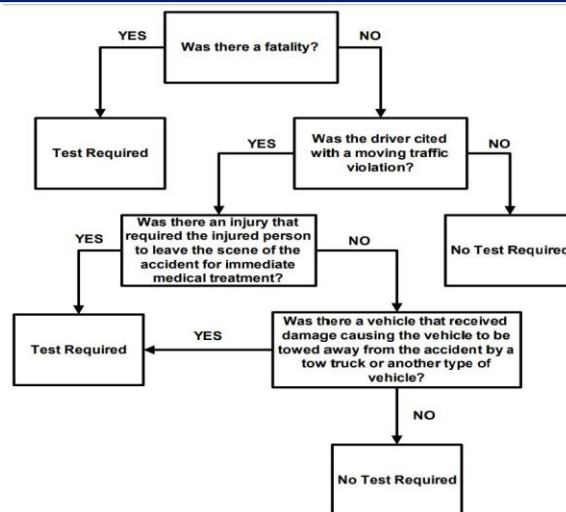


11

11

DOT-FMCSA Post Accident Decision Tree

DERs must know post-accident testing triggers cold – hesitation can mean a missed test.



12

12

Situation #5: DOT vs NONDOT

- Danny's city also performs non-DOT testing for public works / parks staff. He is the DER for both programs.
- He get's confused by who should test for DOT and NOT:
 - "I mean, they both test for the exact same substances, right?"
 - "They only drive a snowplow sometimes, it isn't part of their regular job."
 - "Everyone who has a CDL should test under the DOT Program, right?"
- When an FMCSA auditor arrives, they sort through irrelevant tests, creating confusion and red flags.
- They completely disregard any NONDOT testing, which leaves holes in the DOT testing records.
- This not only creates audit risk but also imperils employees who shouldn't have their test results reported to the FMCSA Clearinghouse.



13

13

Who should test for DOT-FMCSA?

- For an employee to qualify as a DOT-FMCSA safety sensitive employee, their job must have them performing at least one of the following functions:
 - Operate a vehicle with a GVWR of 26,001lbs or more
 - Operate a vehicle designed to carry 16+ passengers
 - Operate a hazmat placarded vehicle

Not all CDL holders are covered by the DOT-FMCSA testing program.



14


14

	PHONE • 719 – 296 – 1911 FAX • 719 – 296 – 0325 EMAIL • INFO@PROCOMTESTING.COM
	<p style="text-align: center;"><i>AWC Client Name - Drug Test Authorization</i></p> <p style="text-align: center;"> <u>Clinic</u> Clinic Name _____ Address _____ City, State ZIP _____ Clinic Phone Number _____ </p> <p>Employee Name _____ Date _____</p> <p>DOT-FMCSA Testing ____ NONDOT Testing ____</p> <p style="text-align: center;"><u>Type of Test</u></p> <p>Pre-Employment ____ Random ____ Post Accident ____</p> <p>Reasonable Suspicion ____ Return to Duty ____ Follow Up ____</p> <p>Breath Alcohol Test Authorized ____</p> <p>Name of Person Authorizing Test _____</p> <p style="text-align: center;"><u>Instructions for Collection Site:</u></p> <p>COCs – Use pre-printed COCs (Alere) stored at your facility</p> <p>MRO – Fax all MRO and BAT copies to Dr. Philip Lopez: (719)296-0325</p> <p>Billing – Bill PROCOM for all drug testing collection / BAT services:</p> <p style="text-align: center;"> PROCOM LLC 1805 Fortino Blvd Pueblo, CO 81008 accounts@procomtesting.com </p>

15

Situation #6: Clearinghouse

- Danny hires a new driver after completing the pre-employment drug test.
- He doesn't realize he must also complete a Clearinghouse full query before hire.
- Driver takes off on a solo cross country load
- During a weigh station check the driver submits to a query and is flagged. The station doesn't let the driver drive the commercial vehicle away.
- Danny has to fly a new driver to pick up the truck and load, and fly his flagged employee back home. This causes disruptions and expense.
- The driver now must undergo the SAP / RTD Process to be eligible to drive again.


16

16

Clearinghouse Overview

- Starting January 1st, 2020 the FMCSA Clearinghouse was created to aggregate information about drug testing violations
 - All violations must be reported
 - Driver history must be queried at least annually
- Contains a 5-year history
- Must go through Return to Duty process to remove record
- Use now adopted widely by state licensing agencies



17

17

FMCSA Clearinghouse: DER Responsibilities

- Responsibilities:
 - Pre-employment queries (full) [delegatable]
 - Annual queries (limited) [delegatable]
 - Reporting violations (alcohol results, refusals, actual knowledge)
 - Recordkeeping of consent and queries



18

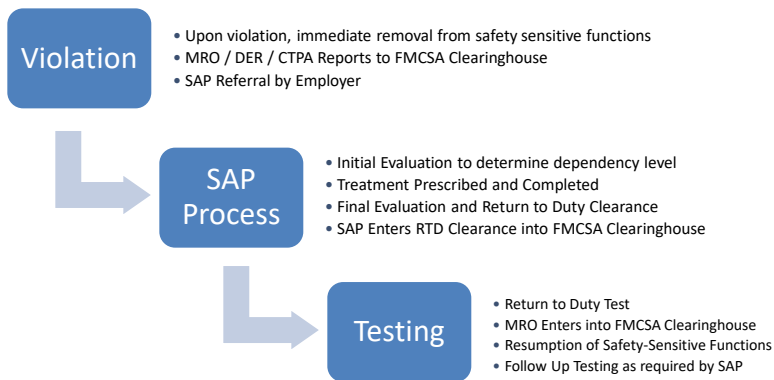
18

Clearinghouse: Actual Knowledge Violation Reporting

- **Alcohol Use on Duty**
 - Supervisor or DER observes a driver drinking from a flask while on duty.
 - Driver admits to drinking alcohol within 4 hours before reporting for duty.
- **Drug Use on Duty**
 - Supervisor sees a driver smoking marijuana in the cab during a layover.
 - Driver confesses to using cocaine while on a run.
- **Refusal**
 - Driver states they will **refuse** to take a required DOT test (that refusal itself = actual knowledge).
- **Law Enforcement Information**
 - Police notify the employer that a CDL driver received a **DUI citation while operating a CMV.**
 - That report triggers an “actual knowledge” violation.



SAP / RTD Process



Upon completion of Follow Up Testing, C/TPA / DER attests to completion in FMCSA Clearinghouse



Scenario #7: Audit Preparation

- Danny has several employees on Follow Up schedules
- He provided the SAP Final Evaluation to his C/TPA to assist with building a schedule
- The C/TPA notifies Danny when testing is required, but he is inconsistent in how he notifies the employees:
 - Sometimes he schedules it as a Random test, so it is not directly observed
 - Sometimes he neglects to notify the employee at all
- He also does not double check the C/TPA to make sure the testing frequency matches the SAP Final Evaluation letter prescribed testing plan.
- Danny is audited and all SAP / Follow Up records are requested
- The auditor informs Danny that he is ultimately accountable for the entire Return to Duty process for his employees and there were multiple deficiencies.



21

21

Audit Flow

- You are typically notified a couple weeks in advance of an audit date
- Present documents
- High level questions about program
- They will select some small % of individuals and request all records for that employee
 - Depending on outcome / completeness they may dig deeper or move on
- Drug / Alcohol Program is typically only a portion of the audit



22

22

Audit Preparation

- Commonly Requested Documentation
 - MIS Reports
 - Random Selection Documentation by Quarter
 - Drug Testing Results
 - Any and All RTD/FUP Documentation

Early preparation for your audit will be welcomed by your partners and give you peace of mind that everything is in order



23

23

Driver Qualification (DQ) File

(FMCSA 49 CFR Part 391 – Safety Regulations)

- Driver's license & CDL copy
- Pre-Employment Drug Test Results
- DOT Medical Examiner's Certificate (DOT physical)
- Road test certificate or CDL skills test record
- Employment application for CMV driver position
- Pre-employment Motor Vehicle Record (MVR)
- Annual MVR & Annual Driver Review form
- Previous employer safety performance history (3 years back)
- Records of violations review & driver's signed certification

Retention: While employed
+ 3 years after termination



24

24

Driver Drug & Alcohol Testing File

(FMCSA 49 CFR Part 40 & Part 382 – Testing Regulations)

Pre-employment negative drug test result

Clearinghouse queries (full at hire, limited annually)

Signed policy acknowledgment form

Random selection notifications & results

Post-accident & reasonable suspicion test records

Return-to-duty & follow-up test results (if applicable)

SAP evaluations & follow-up plans (if applicable)

Documentation of refusals or violations

Retention:

5 years: positives, refusals, SAP docs, follow-ups

2 years: records of testing, collection training

1 year: negatives & canceled results



25

25

Role of a DER - Key Takeaways

- The C/TPA is a partner but it's incumbent on the DER to ensure compliance
- Handling sensitivity information appropriately is key to mitigating compliance risk and creating a trusted working environment
- All FMCSA Required testing reasons must be completed, regardless of state/local laws
- DERs must know post-accident testing triggers to avoid missing the testing window
- DOT vs NONDOT distinction is important, and NONDOT testing will never be recognized by an auditor
- DER's have several responsibilities in the Clearinghouse and only some of them may be delegated
- Audits are usually routine and predictable occurrences; consistent preparation will reduce their burden considerably.



26

26

Questions?

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27

27