



Building a Compliant Drug & Alcohol Testing Policy

**For FTA & FMCSA Covered
Employers**

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Data References: Most data pulled from 2024 National FTA D&A Conference



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A USDOT Compliant D&A Testing Policy...

... Compliant With What?

01

Federal Transit Administration:
[49 CFR Part 655](#)

02

Federal Motor Carrier Safety Administration:
[49 CFR Part 382](#)



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Required Policy Elements



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Required Policy Elements

Policy Adoption & Availability

Policies must be formally adopted by the governing authority

- Substantive revisions must always be reapproved

Must be made available to all covered employees

- Revisions must also be made available to all employees



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Required Policy Elements

Designated Point of Contact

Person/Office/Branch/Position

- Who can answer employee questions



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Required Policy Elements

(FTA) Categories of Employees Covered

- Operating revenue service vehicles, in or out of service
- Operating non-revenue vehicles requiring CDL
- Controlling movement or dispatch of revenue service vehicle
- Maintenance of revenue service vehicle or equipment used in revenue service
- Carrying firearm for security purposes

(FTA) Must include list of covered position with actual job title



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Required Policy Elements

(FMCSA) Categories of Employees Covered

- Any CDL driver

(FMCSA) Safety-Sensitive Functions

- [See 49 CFR 382.107 "Safety-sensitive function"](#)



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Required Policy Elements

Prohibited Drug Use

- Illegal Drug Use Prohibited At **ALL TIMES**
 - Marijuana, Cocaine, Amphetamines, Opioids, PCP
- Testing for Drugs
 - Anytime while on duty

Prohibited Alcohol Use

- Alcohol Use Prohibited:
 - 4 hours prior to SS functions
 - 8 hours after accident
 - While on call to perform SS duties (FTA)
 - While performing SS functions
- Testing for Alcohol
 - Just before, during, or just after SS duties



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Required Policy Elements

Testing Circumstances

List & explain all circumstances when employees will be tested:

- Pre-Employment
- Random
- Post-Accident
- Reasonable Suspicion
- Return-To-Duty (if applicable)
- Follow-Up Testing (if applicable)



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Required Policy Elements

Pre-Employment Testing

- Negative drug test result before 1st SS duty
 - Must be redone if canceled
- Out of SS functions for an extended time:
 - (FTA) If out of the random pool for 90+ days = new pre-employment test
 - (FMCSA) If out of random pool for 30+ days = new pre-employment test
- Applicant previously failing/refusing DOT test must show evidence of USDOT Return to Duty Process
- Pre-Employment Alcohol (Optional)
 - Test before SS duty with BAC < 0.02
 - Must do for all employees and only after contingent offer of employment
 - Must be DOT test (following Part 40)



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Required Policy Elements

Pre-Employment Testing (FMCSA Specific Provision)

- FMCSA allows for the following Pre-Employment Testing Exception to be listed in a D&A policy for employers subject to FMCSA:
 - A FMCSA covered driver is not required to undergo a pre-employment test if:
 - The driver has participated in a DOT testing program within the previous 30 days; and
 - While participating in that program, either:
 - Was drug tested within the past six months (from the date of application), or
 - Participated in the random drug testing program for the previous 12 months (from the date of application); and
 - Prospective employer can ensure that no prior employer of the driver (of whom prospective employer has knowledge) has records of a violation of this part or the controlled substances use rule of another DOT agency within the previous six months

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Required Policy Elements

Random Testing

- Scientifically valid selection method
- Equal chance of selection on each draw
- Testing is conducted throughout the year on all days when SS functions performed and during all times of day when SS functions are performed
- Unannounced and immediate
- Alcohol testing only just before, during, or just after SS functions



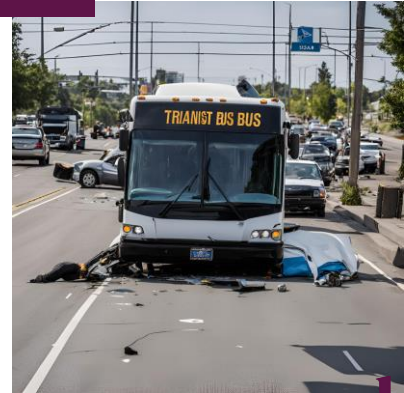
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Required Policy Elements

Post-Accident (FTA)

- List FTA Thresholds
 - Fatality
 - Medical treatment away from scene, unless driver discounted
 - Disabling damage, unless driver discounted
 - (for fixed guideway/vessels only): Vehicle removed from services, unless driver discounted
- Tests all covered employees who could've contributed
- Employees must remain available for testing
 - Requirement to remain readily available is stayed if EE is assisting with accident, or receiving medical attention



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Required Policy Elements

Post-Accident (FMCSA)

- List FMCSA Thresholds
 - Fatality
 - Medical treatment away from scene, and driver received a citation
 - Disabling damage, and driver received a citation
- Employees must remain available for testing
 - Requirement to remain readily available is stayed if EE is assisting with accident, or receiving medical attention



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Required Policy Elements

Reasonable Suspicion Testing

- Determination must be made by trained agency official
- Based on specific, contemporaneous, and articulable observations consistent with drug use/alcohol misuse
 - Appearance
 - Behavior
 - Speech
 - Body Odor
- FMCSA Only - Observations can include chronic effects of drugs (not alcohol)
- Alcohol testing only permissible just before, during, or just after SS functions



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Required Policy Elements

Return to Duty / Follow Up Testing (if applicable)

- Conducted in accordance with 49 CFR Part 40, Subpart O (as amended)
- All tests conducted under direct observations
- Follow-up alcohol testing only permissible just before, during, or just after SS functions



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Required Policy Elements

Testing Procedures:

- Bare minimum requirement in policy:
 - “All USDOT testing will be conducted in accordance with 49 CFR Part 40, as amended”



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Required Policy Elements

Requirement to Submit to Testing:

- Must list that all covered employees required to submit to testing in accordance with (as applicable):
 - 49 CFR Part 655 (For FTA)
 - 49 CFR Part 382 (For FMCSA)



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Required Policy Elements

Refusals to Test:

- Must list all refusals to test as cited in
 - 49 CFR Part [40.191](#) / [40.261](#) (Both FTA and FMCSA)
 - 49 CFR Part [655.44\(c\)](#) (FTA only)
 - 49 CFR Part [382.303\(e\)](#) (FMCSA only)
- Must state that a refusal to test is a violation of DOT regulation (equivalent to Positive Test)



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Required Policy Elements

Consequences:

- List Agency Consequences for DOT violation:
 - Positive drug test
 - Alcohol test 0.04 or above
 - Refusal to test on drug/alcohol
- Must include DOT required actions (regardless of agency discipline):
 - Immediate removal from SS functions
 - Referral to a list of DOT qualified SAPs
 - 2 SAPs if being terminated
 - 1 SAP okay if being offered chance to return



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Required Policy Elements

Consequences (cont.):

- List required consequences for alcohol 0.02-0.039:
 - FTA = removal from SS functions until next work period, but not less than 8 hours (unless retest under 0.02)
 - FMCSA = removal from SS functions until next work period, but not less than 24 hours (unless retest under 0.02)
- REMINDER: Alcohol results 0.02-0.039 are NOT considered DOT violations



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Required Policy Elements

Employer Provisions:

- Policy must CLEARLY identify & delineate between provisions required by USDOT vs. those required locally by the employer
 - Typically accomplished through a "font difference"
- Such provisions:
 - Can't contradict/frustrate USDOT regulations
 - Can't suggest/infer that a violation of local provisions would result in DOT testing/DOT violations



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Required Policy Elements

FMCSA Clearinghouse:

- Only required if you are covered by FMCSA
- Policy must list information required to be reported to the Clearinghouse:
 - A verified positive, adulterated, or substituted drug test result;
 - An alcohol confirmation test with a concentration of 0.04 or higher;
 - A refusal to submit to DOT test;
 - An employer's report of actual knowledge that a driver has:
 - used alcohol while performing safety-sensitive functions;
 - used alcohol within four hours of performing a safety-sensitive function;
 - used alcohol for eight hours following involvement in an accident or until he or she submits to the post-accident drug and alcohol test; or
 - used a controlled substance;
 - A substance abuse professional (SAP) report of the successful completion of the return-to-duty process;
 - A negative return-to-duty test; and
 - An employer's report of completion of follow-up testing.

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Required Policy Elements

FMCSA Self-Identification Program:

- FMCSA covered employer provisions for drivers who admit to alcohol misuse or controlled substances use
- See [49 CFR Part 382.121\(b\)](#)

FMCSA Educational Information:

- FMCSA covered employers must list:
 - 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

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FTA vs. FMCSA

D&A Policy Requirement Comparison

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FTA vs. FMCSA: Policy Requirements

FTA	FMCSA
Develop Policy Statement	Same
Disseminate policy or written notice of availability to all employees	Disseminate policy to all employees
Written notice of policy availability to employee organizations	Same
Signed certificate of receipt <i>recommended</i> , but not required	Signed certificate of receipt required
Approval/adoption by governing authority	

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FTA vs. FMCSA: Policy Requirements

FTA	FMCSA
Identify contact person designated to answer questions	Same
List categories of covered employees	Same
	Must list covered safety-sensitive functions to clarify period of day compliance

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FTA vs. FMCSA: Policy Requirements

FTA	FMCSA
Testing circumstances	Same
Testing procedures in accordance with 49 CFR Part 40	Same
Requirement to submit for testing: Drugs = anytime on duty Alcohol = Just before, during, or after SS functions	Same

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FTA vs. FMCSA: Policy Requirements

FTA	FMCSA
Prohibited Behaviors	Same
Refusal Behaviors/Circumstances	Same
Consequences of positive drug test, alcohol test 0.04 or greater, or test refusal	Same
Consequences of alcohol alcohol test 0.02-0.039	Same

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FTA vs. FMCSA: Policy Requirements

FTA	FMCSA
Any additional employer provisions <i>must be clearly identified</i>	Same
	Information on effects, signs, and symptoms of D&A use, methods of intervention
	Information required to be reported to FMCSA Clearinghouse

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Dual Covered Employers

Do I need two separate policies?

- No, you can combine all into one policy; or have separate policies
- [Sample FTA/FMCSA Policy Available](#)

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RESOURCES

- [FTA Policy Review Checklist](#)
- [FTA D&A Policy Builder](#)
- [FTA D&A Project Office](#)
- [FMCSA D&A Project Office](#)

The collage features four photos of business professionals in meetings. The central overlay is a semi-transparent white box containing the 'RESOURCES' title and four links. The bottom right corner of the collage has a hexagonal pattern with icons for HR, a clock, a money bag, a bar chart, a group of people, and a document.

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