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# 10 STEPS TO DOT COMPLIANCE: PART 49 CFR SECTION 40

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# OUR DOT COMPLIANCE GUIDE

I developed this series because through talking to my clients, I've learned that education gives peace of mind and saves money. Quite a bit of interpretation and implementing of processes are required to keep your trucks on the road and compliant—especially when it comes to the Department of Transportation's regulations.

The DOT is very specific about what you need to do in your drug and alcohol testing program for drivers. If you are not familiar with the 101-page 49 CFR Part 40, it is something you are required to have a copy of. Download it here! But don't let it scare you, because I'll walk you through the key compliance steps in this guide.

Staying compliant isn't always easy. That's why our clients at WSS contact us for assistance. I personally review the steps to remaining compliant with them, so I know how complicated it might seem. That's why I created a guide just for this. If you have any questions along the way through this guide, please contact us at (832) 572-5577.

—Tona Trondsen CPCT, Founder & CEO



**Request a free consultation on how Workplace Safety Screenings can improve your business' performance by protecting your human capital investment.**

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# THE 10 STEPS TO DOT COMPLIANCE

**STEP 1:** Who is to be covered?

**STEP 2:** Key elements of a DOT FMCSA drug and alcohol testing policy

**STEP 3:** Identifying Your DER

**STEP 4:** Employee Education

**STEP 5:** Pre-employment Drug and Alcohol Testing

**STEP 6:** Collection of Previous Drug and Alcohol Testing Results

**STEP 7:** Implementation of Random Screening

**STEP 8:** Supervisor Training

**STEP 9:** Post-accident Procedures

**STEP 10:** The Benefits of a TPA

If you read this guide and take the actions outlined, you will save time, stay compliant, and, most importantly, avoid costly fines.

## STEP 1: WHO SHOULD BE COVERED?

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All drivers (full-time, part-time, and temporary) who operate vehicles interstate or intrastate should be in the DOT drug and alcohol testing program—no exceptions. That even means those who may not normally drive but could possibly drive in an emergency. These are the qualifications of vehicles:

- A gross vehicle weight (GVW) rating of 26,001 pounds or more, and/or
- Over 26,000 pounds in gross weight inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds, and/or
- If the vehicle is designed to transport 16 or more people including the driver, and/or
- If you are transporting hazardous materials that require the vehicle to be placarded.

It is your company's responsibility to make sure all of the policies are followed properly. Do not leave it up to a staffing company to have drivers tested or find compliant drivers for you.

Now that you know who should be covered under the DOT drug and alcohol testing program, you will need to make sure you have all of the details included in a policy.

## STEP 2: THE KEY ELEMENTS YOUR DOT/FMCSA DRUG AND ALCOHOL POLICY NEEDS

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A motor carrier must have a written policy on misuse of alcohol and use of controlled substances. A copy must be given to each employee.

DOT policies need to be very specific to meet the DOT standards, with only a few options to customize it for your company. A good policy will typically be between 15–18 pages long.

You may be asking, "How do I get a policy?" Here are some tips:

- You can hire someone to write it for you. Many attorneys will do this for you, but before you allow them to do this for you, make sure the attorney you use has written DOT policies in the past. You do not want to pay for the attorney's time to learn all the details in 49 CFR part 40. You should expect to pay somewhere around \$400–\$500 for a DOT/FMCSA policy.
- You may be provided a policy to start your DOT drug-testing services if you engage a drug-testing company.

If you're feeling adventurous, you can write your own. It may be the cheapest option on the surface. If you feel like reading the 101-page document (49 CFR Part 40 & 382), understanding it, then writing a policy that is over 10 pages long is worth less than \$400, then this might be a good option.

### TAKE ACTION

This completes steps one and two in this series on FMCSA compliance. Before moving on to the next section, take a moment to go through your employee list and identify the people who need to be covered by your DOT policy. Then, review your DOT policy (if you have one) to make sure it's up to date. It does change occasionally, so it's always a good idea to make sure it is current.

## STEP 3: IDENTIFYING YOUR DER

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There's nothing worse than having a driver in an accident only to realize that he/she was never placed in your drug and alcohol testing program. The DOT does not care much about "clerical errors."

### TAKE ACTION

I'm going to make an important suggestion right now. Identify your Designated Employer Representative, or DER, and decide if a DER training class is appropriate.

Your DER is the person employed by your company who is responsible for maintaining files and making disciplinary decisions on all your drug testing results. Typically, this person is your HR manager, a safety manager, or, for small companies, it could be the owner of the business.

While not a DOT requirement, it is considered a best practice to have this person attend a DER training course. This class usually lasts 3–4 hours and gives your DER all the know-how needed to handle the policy decisions that will come up.

In general, the DER also handles employee education, as well—our next topic of discussion.

## STEP 4: EMPLOYEE EDUCATION

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Once you have written your policy and distributed it to your employees (step two), you should make sure your employees are educated about the program and understand how testing takes place.

Your employees need to know how and when they will be tested, what their random program consists of, how names are selected, the exact testing procedures, the medical review officer (MRO) process, and what could constitute a "refusal to test" ruling. It is also important to educate your employees on the consequences of policy violation.

This education is critical for a couple of reasons. First, it keeps you compliant. Second, if your employees understand the policy, what is expected, and the consequences of non-compliance, you generally get a lower positive-test rate. A refresher about the consequences of job loss will often give you better testing results.

### TAKE ACTION

So, your second tip is to review your employee education practices. Do all your employees understand your policy and its consequences? If you want help putting together your employee education, email us and we'll send you a free guide to conducting your employee education!

Working in this profession has given me a unique skill. I can tell which businesses have pre-employment drug testing by how prompt, courteous, and great the service was. Nine times out of 10, when I ask the manager or owner of a business that has exceeded my expectations whether they do pre-employment drug testing, the answer is YES!

Coincidentally, as a DOT-compliant business, you need to have pre-employment drug screening, as well. Not just because it's a good idea and helps improve the quality of your workforce, but because 49 CFR Part 40 says so.

# STEP 5: PRE-EMPLOYMENT DRUG AND ALCOHOL TESTING

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This step covers pre-employment screenings and how to collect your employees' previous drug testing results. (Yes, I know this step can be painful, but you have to do it.)

Here's where you start:

- DOT-covered employees need to have a pre-employment DOT drug test completed.
- You must have a negative test result in hand in order to have the employee perform any safety-sensitive job function.
- This means no driving. The employee cannot drive a vehicle that meets the DOT criteria before you have the test result in hand.
- DOT drug tests are very specific. The drugs that are tested are the same every time.
- The paperwork you get for the drug test should identify that it is a DOT or federal drug test.
- Instant tests (that give you a result while you wait) are not allowed.
- Only certain labs can process DOT drug tests. Collection companies will collect the urine specimen using the specific DOT standards and then overnight those samples to a Substance Abuse and Mental Health Services Administration (SAMHSA)-certified lab for the DOT drug test.
- Results may come as early as the next day, but it typically takes a couple days.
- While waiting for the result, you may have the employee perform other work functions besides driving one of your DOT vehicles.

## TAKE ACTION

Okay, that brings me your next tip: Verify that you have pre-employment drug-test results for every single employee that is covered by your DOT policy. If an employee's results are missing, they need to be tested immediately. In the meantime, they should NOT be driving a DOT-qualifying vehicle!

After getting your negative pre-employment drug test results, you can allow the employee to go to work. However, you have 30 days to verify the status of previous employers' drug and alcohol test results.

## STEP 6: COLLECTION OF PREVIOUS DRUG AND ALCOHOL TESTING RESULTS

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You need to contact all previous employers from the preceding three years and provide those employers with signed documentation from the employee saying that he/she agrees to release that information to you.

Within 30 days of a new hire, you need to have all the records on hand or have proof that you made good attempts to get this information. This rule is in place to make sure anyone you hire has not refused a test or failed a test and then changed employers without completing the Substance Abuse Professional (SAP) programs as required by the DOT.

If you need employee release forms that allow you to collect previous drug-testing results, I have an electronic copy that you can [download here](#) for free. Enjoy!

### TAKE ACTION

Now, another assignment: Verify that you have all previous drug-testing results for each of your DOT employees or proof that you made good attempts to get them.

Dozens of details and decisions must be made when ensuring all of your DOT compliance ducks are in a row. We know it can be daunting, and that's why we've put together this email series for you. Over the past decade, my team of compliance specialists have put together a fool-proof program to help you master DOT compliance. Today, we're reviewing steps seven and eight.

## STEP 7: IMPLEMENTATION OF RANDOM SCREENING

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Okay, so now we've come to the meat of the policy implementation—random screenings. On paper, this is pretty simple. You should have all drivers in a random testing pool that consists only of DOT employees. The random selection rate should be 50 percent for drug tests and 10 percent alcohol tests per year.

If you have only a few drivers who need to be in a random pool, you can enter them into a drug-testing consortium with hundreds of other drivers from other companies. The names for random screenings are pulled from this larger list of people. The DOT only requires you to use a consortium if you have one driver; however, many small companies use the consortium anyway to simplify the process. This is where a third-party administrator (TPA) comes in handy, which is covered in step 10.

At this point, you'll need to select a drug-testing company that can carry out your screenings. The range of services provided by these companies is wide, but a key service is the ability to manage a DOT drug-testing random pool. Some companies charge for this and some include it in their services.

Your next task is to find a reputable testing company, authorize them to do your testing, and enter you into a consortium if needed. It is also possible to hire a TPA that outsources your testing to a local provider.

## STEP 8: SUPERVISOR TRAINING

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Now, let's fast-forward three months. You have it all together and are getting your quarterly testing performed. Excellent work! But then—it happens. One of your supervisors notices someone acting a little odd.

It's critical that your supervisors understand your policy and know how to handle a reasonable-suspicion situation. There are a lot of things to consider here, and it's required that your supervisors attend a reasonable-suspicion supervisor's training class that follows the DOT requirements.

The FMCSA DOT guideline on this is one hour of training on drugs and one hour on alcohol. Again, this training is required for anyone who schedules drivers or manages them in any way. The training should teach your supervisors about the signs and symptoms of substance abuse and also how to confront your employees and document your findings.

What's next: Identify all supervisors (as defined above) and ensure that they have ALL taken a DOT Reasonable Suspicion Supervisor Training Course. These courses are available online or can be done in person. My favorite is the in-person class because I think the one-on-one conversations are very impactful. I also like all the opportunities for questions and the opportunity to address real-life occurrences.

## STEP 9: POST-ACCIDENT PROCEDURES

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First of all, an emergency kit should be in the vehicle that includes a COC form instructing your drivers on who to call if a drug and alcohol test is required as well as any other instructions.

DOT requires a drug and alcohol test within two hours for certain types of accidents. Your post-accident kit will help identify whether the accident requires a drug and alcohol test. It will also help drivers identify a place to get a test at any time.

What types of accidents require a drug and alcohol test? The HEARSE, nurse, wrecker test is a good way to remember.

**HEARSE:** If there were any human fatalities in the accident, your driver will need to get a DOT drug and alcohol test.

**NURSE:** If anyone involved in the accident requires medical attention away from the scene of the accident, you MAY need a DOT drug and alcohol test IF your driver receives a ticket or is cited in the accident. To clarify, the nurse part alone does not mean your driver needs to be tested; the driver also needs to be ticketed in the accident.

**WRECKER:** If any vehicle is disabled to the point it needs to be towed from the scene of the accident, then your driver MAY need to get a drug and alcohol test. In this case, your driver also needs to have been ticketed or cited in the accident. So, if a vehicle is towed and the driver gets a ticket, they will need to be tested.

Since you can't predict when an accident will happen, you may not have a reliable 24/7/365 provider identified in case of emergency. WSS provides 24/7 service for post-accident situations. If you get that call and know you need to get a test done, you can call us at (832) 572-5577. Keep that phone number handy, even if it's just a backup solution.



## STEP 10: THE BENEFITS OF A TPA

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Today I'm going to cover the last thing you should consider when putting together your DOT drug and alcohol testing program for FMCSA—the use of a third-party administrator (TPA).

Everything you've done to this point has involved setting up processes and procedures that you will use to manage your program yourself. However, if you prefer to have someone assist you in staying compliant, then you should think about using a TPA.

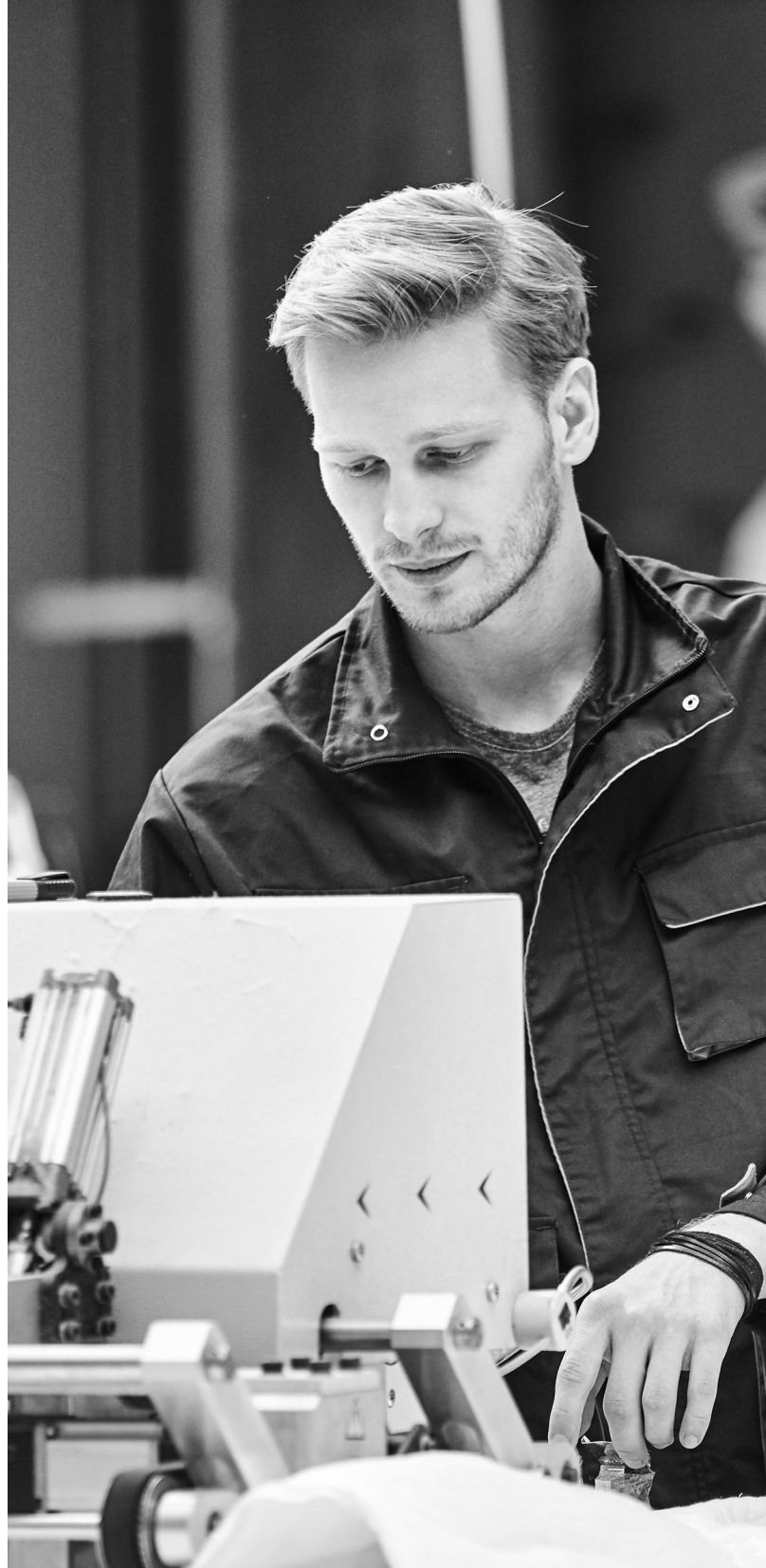
The key benefit of a TPA is that they can set up a lab-and-MRO account and handle your reporting for you so that you can get your drug-test collections done virtually anywhere in the country. They will also gently remind you when you risk falling out of compliance.

The use of a TPA is not a DOT requirement, but if you have a TPA manage your drug testing program in the early stages, as you grow, it will cause less stress and cost less. In fact, hiring the right TPA is the fastest, easiest way to gain peace of mind and a great return on investment.

You will be required to produce status reports for the DOT to show your testing rates and statistics. If you utilize several testing sites and various labs, this can be an extremely time-consuming process to gather the information you need. The auditor might even ask you for a report from your lab, which gets complicated if you are using several.

If you use one TPA lab and have your own account, the report can be generated for you in seconds. Don't discount this suggestion, because it will save you a lot of headaches in the long run with minimal setup costs. To have an account set up, just contact your TPA of choice.

Tired of downloading forms and doing homework assignments? WSS provides turnkey services to companies with one owner-operator and up to hundreds of drivers. If you want to learn more, you can visit our [website](#) or call me.



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